









HISTORY  
AND  
Civil Government of Louisiana

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AND

THE GOVERNMENT OF THE UNITED STATES

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# THE STATE GOVERNMENT SERIES

UNDER THE GENERAL EDITORSHIP OF

**B. A. HINSDALE, Ph.D., LL.D.**

Professor of the Science and the Art of Teaching in the University of Michigan;  
 Author of "The American Government," "Studies in Education," etc.

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## PREFACE

This volume, it will be seen, embraces a sketch of the history of Louisiana, a detailed description of its present government, and a briefer but fairly comprehensive description of the Federal government. It is believed that in the public and the private schools of this State there is need of such a work. It is true that Civics is now taught in some of our high schools; but no work has been previously published with so full an account of the present composition and working of the town, city, parish, and central departments of the government of Louisiana.

This portion of the book is based upon the recent constitution (1898) and upon the most important acts of the General Assembly that are now in force. It is hoped that this portion of the work will prove of special interest and value not only to youthful students, but also to many adult readers.

Most of our manuals on Civics give much space to the description of the functions of the general government; but when they come to the subject of State governments, which interests and touches the average citizen in nearly all the affairs of his daily life, they offer only such a general description as applies to all the States. From such books, therefore, the Louisianian or the Mississippian cannot derive the information that in the discharge of his duties as a citizen he so often needs.

Historically and logically the study of the State gov-

ernment precedes that of the Federal government, and serves as an important aid to the understanding of it.

A modern State constitution, however, is always a long, and often a rather dry document. As a result all teachers testify to the woeful ignorance that young students in high schools and colleges often exhibit of the provisions of their State constitution. The result of such ignorance is hazy notions of the rights and duties of citizenship. To the promotion, therefore, of a deeper and broader preparation for life this book is dedicated.

JOHN R. FICKLEN.

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# GENERAL INTRODUCTION.

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The character of the volumes that will comprise The State Government Series is indicated by the name of the series itself. More definitely, they will combine two important subjects of education, History and Government. It is proposed in this Introduction briefly to set forth the educational character and value of these subjects, and to offer some hints as to the way in which they should be studied and taught, particularly as limited by the character of the Series.

## 1. THE EDUCATIONAL VALUE OF THE STUDY OF HISTORY AND GOVERNMENT.

Not much reflection is required to show that both of these subjects have large practical or guidance value, and that they also rank high as disciplinary studies.

1. *History*.—When it is said that men need the experience of past ages to widen the field of their personal observation, to correct their narrow views and mistaken opinions, to furnish them high ideals, and to give them inspiration or motive force; and that history is the main channel through which this valuable experience is transmitted to them—this should be sufficient to show that history is a very important subject of education. On this point the most competent men of both ancient and modern times have delivered the most convincing testimony. Cicero called history “the witness of times, the light of truth, and the mistress of life.” Dionysius of Halicarnassus said “history is philosophy teaching by

examples," and Lord Bolingbroke lent his sanction to the saying. Milton thought children should be taught "the beginning, the end, and the reasons of political societies." Another writer affirms that "history furnishes the best training in patriotism, and enlarges the sympathies and interests." Macaulay said: "The real use of traveling to distant countries, and of studying the annals of past times, is to preserve them from the contraction of mind which those can hardly escape whose whole commerce is with one generation and one neighborhood."

In every great field of human activity the lessons of history are invaluable—in politics, religion, education, moral reform, war, scientific investigation, invention, and practical business affairs. The relations of history and politics are peculiarly close. There could be no science of politics without history, and practical politics could hardly be carried on. But, more than this, there can be no better safeguard than the lessons of history against the specious but dangerous ideas and schemes in relation to social subjects that float in the atmosphere of all progressive countries. In fact, there is no other safeguard that is so good as these lessons; they are experience teaching by examples. The man who has studied the history of the Mississippi Scheme, the South Sea Bubble, or some of the less celebrated industrial or economical manias that have afflicted our own country, is little likely to embark in similar schemes himself, or to promote them. The man who has studied the evils that irredeemable paper money caused in France in the days of the Revolution, or the evils that the Continental money caused in our own country, will be more apt to form sound views on the subjects of currency and banking than the man who has had no such training. The

school of history is a conservative school, and its lessons are our great defense against cranks, faddists, and demagogues.

2. *Government*.—Politics is both a science and an art. It is the science and the art of government. As a science it investigates the facts and principles of government; as an art it deals with the practical applications of these facts and principles to the government of the state.

Now it is manifest that the art of politics, or practical government, directly concerns everybody. Few indeed are the subjects in which men, and particularly men living in great and progressive societies, are so deeply interested as in good government. The government of the state is charged with maintaining public order, securing justice between man and man, and the promotion of the great positive ends of society. For these purposes it collects and expends great revenues, which are ultimately paid from the proceeds of the labor of the people. Furthermore, in republican states, such as the American Union and the forty-five individual States that make up the Union, government is carried on by the people through their representatives chosen at popular elections. The voters of the United States are a great and rapidly growing body. In the presidential election of 1888, 11,388,007 citizens participated; in the presidential election of 1896, 14,071,097—a growth of more than 2,680,000 in eight years. Moreover, these voters are felt in many other ways and places; they vote for National representatives, for State legislatures, executives, and judges, for county, township, and city offices, for the supervisors of the roads and the directors of the public schools. There is not a point in the whole round of National, State, and Local government that the popular will, as expressed at elections,

does not touch. Every man is, therefore, directly concerned to understand the nature and operations of these governments, and almost equally concerned to have his neighbors also understand them.

We have been dealing with practical politics exclusively. But the art of government depends upon the science of government. The government of a great country like our own, at least if a good one, is a complicated and delicate machine. Such a government is one of the greatest triumphs of the human mind. It is the result of a long process of political experience, and in its elements at least it runs far back into past history. It is, therefore, a most interesting study considered in itself. All this is peculiarly true of our own government, as will be explained hereafter.

However, this complicated and delicate machine is not an end, but only a means or instrument; as a means or instrument it is ordained, as the Declaration of Independence says, to secure to those living under it their rights—such as life, liberty, and the pursuit of happiness; and the extent to which it secures these rights is at once the measure of its character, whether good or bad.

It is also to be observed that a government which is good for one people is not of necessity good for another people. We Americans would not tolerate a government like that of Russia, while Russians could hardly carry on our government a single year. A good government must first recognize the general facts of human nature, then the special character, needs, habits, and traditions of the people for whom it exists. It roots in the national life and history. It grows out of the national culture. Since government is based on the facts of human nature and human society, it is not a mere crea-

ture of accident, chance, or management. In other words, there is such a thing as the science of government or politics. Moreover, to effect and to maintain a good working adjustment between government and a progressive society, is at once an important and difficult matter. This is the work of the practical statesman. And thus we are brought back again to the fact that the science of government is one of the most useful of studies.

Mention has been made of rights, and of the duty of government to maintain them. But rights always imply duties. For example: A may have a right to money that is now in B's possession, but A cannot enjoy this right unless B performs the duty of paying the money over to him. If no duties are performed, no rights will be enjoyed. Again, the possession of rights imposes duties upon him who possesses them. For example: The individual owes duties to the society or the government that protects him in the enjoyment of his rights. Rights and duties cannot be separated. Either implies the other. Accordingly, the practical study of government should include, not only rights, but also duties as well. The future citizen should learn both lessons; for the man who is unwilling to do his duty has no moral claim upon others to do theirs.

The foregoing remarks are particularly pertinent to a republican government, because under such a government the citizen's measure of rights, and so of duties, is the largest. Here we must observe the important distinction between civil and political rights. The first relate to civil society, the second to civil government. Life, liberty of person, freedom of movement, ownership of property, use of the highways and public institutions, are civil rights. The suffrage, the right to hold

office under the government, and general participation in public affairs are political rights. These two classes of rights do not necessarily exist together; civil rights are sometimes secured where men do not vote, while men sometimes vote where civil rights are not secured; moreover, both kinds of rights may be forfeited by the citizen through his own bad conduct. Evidently political rights are subordinate to civil rights. Men participate in governmental affairs as a means of securing the great ends for which civil society exists. But the great point is this—republican government can be carried on successfully only when the mass of the citizens make their power felt in political affairs; in other words, perform their political duties. To vote in the interest of good government, is an important political duty that the citizen owes to the state. Still other political duties are to give the legally constituted authorities one's moral support, and to serve the body politic when called upon to do so. These duties grow out of the corresponding rights, and to teach them is an essential part of sound education.

It has been remarked that good government rests upon the facts of human nature and society, that such a government is a complicated machine, and that it is an interesting subject of study. It is also to be observed that the successful operation of such a government calls for high intellectual and moral qualities, first on the part of statesmen and public men, and secondly on the part of the citizens themselves. There are examples of an ignorant and corrupt people enjoying measurable prosperity under a wise and good monarch; but there is no example of a democratic or republican state long prospering unless there is a good standard of intelligence and virtue. This is one of the lessons that Washington

impressed in his Farewell Address: "In proportion as the structure of a government gives force to public opinion, it is essential that public opinion shall be intelligent."

Government deals with man in his general or social relations. Robinson Crusoe living on his island neither had, nor could have had, a government. Man is born for society; or, as Aristotle said, "man has a social instinct implanted in him by nature." Again, man is political as well as social; or, as Aristotle says, "man is more of a political animal than bees, or any other gregarious animal." Hence the same writer's famous maxim, "Man is born to be a citizen."

These last remarks bring before the mind, as a subject of study, man in his relations to his fellow men. The study of man in these relations has both practical and disciplinary value. At first man is thoroughly individual and egotistical. The human baby is as selfish as the cub of the bear or of the fox. There is no more exacting tyrant in the world. No matter at what cost, his wants must be supplied. Such is his primary nature. But this selfish creature is endowed with a higher, an ideal nature. At first he knows only rights, and these he greatly magnifies; but progressively he learns, what no mere animal can learn, to curb his appetites, desires, and feelings, and to regard the rights, interests, and feelings of others. To promote this process, as we have already explained, government exists. In other words, the human being is capable of learning his relations to the great social body of which he is a member. Mere individualism, mere egotism, is compelled to recognize the force and value of altruistic conviction and sentiment. And this lesson, save alone his relations to the Supreme Being, is the greatest lesson

that man ever learns. The whole field of social relations, which is covered in a general way by Sociology, is cultivated by several sciences, as ethics, political economy, and politics; but of these studies politics or government is the only one that can be introduced in didactic form into the common schools with much success. In these schools civil government should be so taught as to make it also a school of self-government.

It may be said that so much history and politics as is found in these volumes, or so much as can be taught in the public schools, does not go far enough to give to these studies in large measure the advantages that have been enumerated. There would be much force in this objection, provided such studies were to stop with the elementary school. But fortunately this is not the case. The history and the politics that are taught in the elementary school prepare the way for the history and the politics that are taught in the college and the university. Furthermore, and this is in one aspect of the subject still more important, they also prepare the way for much fruitful private study and reading in the home.

## II. METHODS OF STUDY AND TEACHING.

Under this head history will be considered only so far as it is involved in politics. Our first question is, Where shall the study of government begin? The answer will be deferred until we have considered the general features of the government under which we live.

The United States are a federal state, and the American government is a dual government. Our present National Government dates from the year 1789. It was created by the Constitution, which, in that year, took the place of the Articles of Confederation. At that time the State governments were in full operation, and it was



not the intention of the framers of the Constitution, or of the people who ratified it, to supersede those governments, or, within their proper sphere, to weaken them. Experience had conclusively shown that the country needed a stronger National Government, and this the people undertook to provide. So they undertook to accomplish in the Constitution the objects that are enumerated in the Preamble.

“We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

The Constitution also formally denied some powers to the United States and some to the States; that is, it forbade the one or the other to exercise the powers so prohibited. (See Article I, sections 9, 10.) The understanding was that the mass of powers not delegated to the Union exclusively, or forbidden to the States, continued to remain in the hands of the people in their State capacities. Moreover, this understanding was expressly asserted in Article X of the Amendments.

Accordingly, the Government of the United States must be studied under two aspects, one National and one State. The case is quite different from what it would be in England or France, both of which countries have single or unitary governments. This duality makes the study more interesting, but more difficult, and suggests the question whether it should begin with the Nation or the State. The answer must be deferred until still other facts have been taken into account.

The powers that the State Governments exercise are exercised through a variety of channels. (1.) Some are exercised directly by State officers. For the most part these are powers that concern the State as a whole. (2.) Some are exercised by county officers within the county. (3.) Some are exercised by town or township officers within the town or county. (4.) Some are exercised by city or municipal officers within the city. (5.) A few fall to officers elected by divisions of townships, as road-masters and school directors.

Items 2, 3, 4 and 5 of this enumeration constitute Local government, which the people of all the States, in some form, have retained in their own hand. Here we meet a political fact that distinguishes us from some other countries, the vigorous vitality of local institutions. France, for example, although a republic, has a centralized government; many powers are there exercised by national officers that here are exercised by local officers, while there the state often asserts direct control over the local authorities. Strong attachment to local self-government, and opposition to centralized government, is one of the boasted glories of the English-speaking race. Subject to the State constitution, the State Legislature is the great source of political power within the State. The county, the township, and the city owe their political existence and peculiar organization to the Legislature.

Different States have organized local government in different ways. Speaking generally, there are three types—the Town type, the County type, and the Mixed type. The Town type is found exclusively in the New England States. It throws most of the powers of local government into the hands of the town, few into the hands of the county. The County type, which is found

in the Southern States and in a few others, reverses this method; it throws all local powers into the hands of the county, and makes the sub-divisions of the county merely an election precinct, the jurisdiction of the justice of the peace, and perhaps the unit of the militia company. The Mixed, or Compromise system, as its name implies, combines features of the other two. It makes more use of the county, and less of the town, than New England; more of the township, and less of the county, than the South. It is found in the Central States and generally, but not universally, throughout the West.

Now not much argument is needed to show that the study of government, even within the limits of the elementary school, should embrace the two spheres in which the American Government moves, the sphere of the Nation and the sphere of the State. Neither is much argument called for to show that the study of the State should embrace Local government, as well as State government proper. The argument on the whole subject divides into two main branches—the one practical, the other pedagogical.

Unfortunately, the time given to the study of government in the schools has not always been wisely distributed. For many years the National Government received disproportionate attention, and such, though perhaps in less degree, is still the case. But, important as the powers of the Nation are, the common citizen, in time of peace, has few relations with it outside of the Post Office Department, while his relations with the State are numerous and constant. President Garfield, in 1871, said: "It will not be denied that the State government touches the citizen and his interests twenty times where the National Government touches him once."

Still another point may be urged. An American State is a distinct political community. It is a separate commonwealth having its own constitution, laws, and officers. It has its own history. The people boast its services to the country. They point to its great names. They glorify the associations that cluster about its name. They dwell upon its typical or ideal life. All this is educative in a striking sense; such an environment necessarily reacts upon the people. Who can measure the effect of the old Bay State ideal, or the Old Dominion ideal, upon the people of either State?

Once more, Local government has received too little attention as compared with State government proper. Township or county government is on such a diminutive scale that to many it seems a subject unworthy of serious study. But it is important to teach the youth of the county that their future prosperity and happiness, as a rule, will depend upon what is done by road-masters, school directors, township trustees or supervisors, county commissioners or county courts, city authorities, and the like, far more than upon what is done by the Governor or the President. The common citizen is tenfold more concerned in the proceedings in the courts held by justices of the peace and by county judges than in the causes that are decided by the Supreme Court of the United States.

Government is fundamentally an information or guidance study. It is put in the schools to teach the pupil how to perform his political duties intelligently when he comes to the state of manhood. In order that he may perform these duties intelligently, he must understand the nature and the ends of government, whether National, State, or Local, and the mode of its operation.

The fact is, however, that characteristic features of our government are ill understood by thousands of our citizens. The functions of the Executive and of the Judiciary are often confounded; likewise the functions of State authorities and National authorities. A multitude of citizens participate in every election of electors for President, who do not know how the President is elected. The line dividing the State sphere from the National sphere is a very hazy matter to many persons who consider themselves intelligent. Owing partly to this fact, and partly to the greater prominence of the Union, there is always a tendency in many quarters to hold the National authorities responsible for what the State authorities have or have not done. The adjustment of Local Government to the State and National Governments is another matter concerning which many are confused. Tax-payers can be found in every neighborhood who think the taxes that they pay to the township or the county treasurer go to Washington.

What has been said will suffice for the practical branch of the argument. Taking up the pedagogical branch, let us first observe the nature and the origin of the child's early education in respect to government.

It is in the family, in personal contact with its members, that the child forms the habits of obedience and deference to others. It is here that he learns, in a rudimentary and experimental way, that he is part of a social whole. Here he acquires the ideas to which we give the names *obedience*, *authority*, *government*, and the like. His father (if we may unify the family government) is his first ruler, and the father's word his first law. Legislative, executive, and judicial functions are centered in a single person. These early habits and ideas are the foundations of the child's whole future education in government, both practical and theoretical.

His future conception of the governor, president, king, or emperor is developed on the basis of the idea of his father; his conception of society, on the basis of the idea of his home; his conception of government by the State, on the basis of family government. Of course these early habits and ideas are expanded, strengthened, and adjusted to new centers.

While still young, the child goes to school. This, on the governmental side, is but a repetition of the home. It is the doctrine of the law that the teacher takes the place of the parent: *in loco parentis*. The new jurisdiction may be narrower than the old one, but it is of the same kind. The education of the school reinforces the education of the home in respect to this all-important subject. The habits of obedience and deference are strengthened. The child's social world is enlarged. At first he thought, or rather felt, that he was alone in the world; then he learned that he must adjust himself to the family circle; now he discovers that he is a member of a still larger community, and that he must conduct himself accordingly. The ideas of authority, obedience, law, etc., are expanded and clarified.

About the time that the child goes to school he begins to take lessons in civil government. This also is developed on the basis of his previous home-training. It begins at the very door-step. The letter-carrier, the policeman, the justice of the peace, and the postmaster introduce him to the government of the outer world. Some or all of these officers he sees and knows, and others he hears about. The very mail wagon that rattles along the street teaches its lesson, and so do other symbols of authority that confront him. He attends an election and hears about the caucus. As he grows older, the town council, the court of the local magistrate, and the constable or sheriff teach him the

meaning of the three great branches of government. His ears as well as his eyes are open. Politics is the theme of much familiar conversation to which he listens. With all the rest, he reads the newspaper, and so enlarges his store of political information.

Still other agencies contribute to the grand result. The church, public meetings, societies of various kinds, all teach the lessons of order and discipline.

Such, in general, are the steps by which the child makes his way out of the world of isolation and selfishness into the world of social activity and light. Such is the character of his early education in morals and politics. Nor is it easy to overestimate these early lessons. To suppose that the child's political education begins when he first reads the Constitution of the United States, is like supposing that his moral education begins when he is first able to follow the preacher's sermon.

All this training is unconscious and mainly incidental, and the more effective for that very reason. But such training will not meet the ends of intelligent citizenship. Nor can the political education of citizens be left to the newspaper and the political speaker. Government must be formally taught in the schools. But what shall be the order of study? Shall the child begin at Washington, at the State capital, or at his own home? In other words, shall he begin with the National Government, with the State government proper, or with Local government?

For a time the student of government should continue to work on the material that lies right about him, just as the student of geography should find his first lessons at home. On this point the arguments already presented are decisive. The practical argument shows that this will be the most useful course to pursue. The pedagogical argument shows that it is also the easiest, the

most natural, and the most successful. In general then the method should be—first, the Local Government; second, the State Government, and last, the National Government.

We have now reached a point where we can define more clearly and fully the special object of the series of books to which this is a general introduction. These books are designed for the first stage of the formal study of the subject of Government. They are written on the theory announced; viz.: That the child's political education begins at home, and should for a time proceed from the home outward. The series is appropriately named The State Government Series. A volume will be given to a State. The successive volumes will first present an outline sketch of the civil history of the State, and then outline sketches of the State and National Governments as they now exist and operate.

With two or three practical suggestions to teachers, this Introduction may fitly close.

The first of these suggestions is that if the proper course be taken, the study of the National system will not be deferred until the pupil has made a complete survey of the State System. The State system can no more be understood alone than the National system alone. When the intelligent pupil, and particularly a boy, is old enough to take up one of the volumes of this series, he will already have made some progress in discriminating the two systems. He will know that Congress and the President belong to the Nation, the Legislature and the Governor to the State. But at the outset it may be advisable for the teacher to broaden and deepen this line of division. This can be done, if need be, in one or more oral lessons devoted especially to the subject. Moreover, the teacher should keep an eye on this line from first to last. He should encourage the pupil to read the



Constitution of the United States, and in particular should direct his attention to the general powers of Congress as summed up in Article I, section 8, which are the driving wheels of the National Government.

The second observation is that unremitting care must be taken to make the instruction real. The common-places about the abstractness and dryness of verbal instruction, and particularly book instruction, will not be dwelt upon, except to say that they apply to our subject with peculiar force. The study of history, when it is made to consist of memorizing mere facts, is to the common pupil a dry and unprofitable study. Still more is civil government dry and unprofitable when taught in the same manner. There is little virtue in a mere political document or collation of political facts. The answer that the school boy made to the question, "What is the Constitution of the United States?" is suggestive. He said it was the back part of the History that nobody read. Hence the book on government must be connected with real life, and to establish this connection is the business of the teacher. On this point three or four hints may be thrown out.

The teacher should not permit the Governor, for example, to be made a mere skeleton. He should see rather that he is made to the pupil a man of flesh and blood, holding a certain official position and exercising certain political powers. It is better to study the Governor than the Executive branch of the government; better to inquire, What does the Governor do? than, What are the powers of the Executive?

The teacher should stimulate the pupil to study the political facts about him. He should encourage him to observe the machinery of political parties, the holding of elections, council meetings, courts of local magistrates, and the doings of the policeman, constable, and

sheriff. This suggestion includes political meetings and conversations upon political subjects. By observation an undue personal attendance upon such proceedings is not meant. To that, of course, there might be several objections.

Pupils in schools should be encouraged to read the newspapers, for political among other reasons. The publications prepared particularly for school use to which the general name of "Current Events" may be given, are deserving of recommendation.

Still another thought is that the study be not made too minute. It should bear rather upon the larger features of the special topics. This remark is particularly applicable to the judiciary, which nearly all persons of ordinary education find more or less confusing.

The suggestions relative to observation of political facts are peculiarly important in a country like our own. To understand free government, you must be in touch with real political life.

In teaching Civil Government, the first point is to develop Civic Spirit—the spirit that will insist upon rights and perform duties.

The last word is a word of caution. The method that has been suggested can easily be made too successful. Our American atmosphere is charged with political interest and spirit; and, while the pupil who takes a lively interest in current politics, as a rule, will do better school work than the pupil who does not, the teacher must exercise care that partisan spirit be not awakened, and that occupation in current events do not mount up to a point where it will interfere with the regular work of the school.

B. A. HINSDALE.

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# PART I

## THE HISTORY OF LOUISIANA

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### INTRODUCTION.

The region to which the name of Louisiana was originally applied, extended from the borders of Canada to the blue waters of the Gulf of Mexico, and from the Alleghany range on the east to the Rocky Mountains on the west. This vast territory, comprising about one and one-quarter millions of square miles, is watered by the Mississippi and its numerous tributaries. With its rich soil, its salubrious climate, and its superb forests, Louisiana naturally became an object of desire to the three great colonizing nations of Europe—Spain, France, and England. Spain was the first to explore it, France was the first to colonize it, while England, in 1763, obtained by treaty nearly all that portion of it lying east of the Mississippi; but the manifest destiny of the whole region seemed to be that it should pass into the possession of the United States of America.

It is our purpose to trace in brief outline the history of Louisiana from the earliest times down to the present day. To do this we must transport the reader back to the sixteenth century, when the pioneers of European colonization, their imaginations fired with dreams of new worlds to conquer and vast wealth to acquire, were hazarding their lives in exploring the strange lands of this continent.

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## CHAPTER I

### THE SPANISH EXPLORERS

1. Ponce de Leon and Narvaez.—As early as the year 1513, just twenty-one years after the discovery of America, a Spaniard named Ponce de Leon, while seeking that wonderful fountain the waters of which

were fabled to renew the youth of the old and decrepit, discovered and named the peninsula of Florida. This expedition opened the way for others, and in 1528 Pamphilo de Narvaez led an exploring party into the interior of Northwestern Florida. Instead of making friends of the Indians whom he met, Narvaez tried to subdue them. They proved themselves, however, such dangerous enemies that the Spaniards were glad to retire to the sea coast. Here, having missed the vessels that brought them, they built some rude boats and set sail, probably from what is now Choctawhatchee Bay. After coasting for many days, they crossed the mouth of a mighty river, which could have been no other than the Mississippi itself. The discoverers drank of the fresh water, but their frail crafts were scattered by the strong current, and the vessel in which Narvaez had embarked was never heard of again.

Three of the boats, however, were cast upon the coast of what is now Texas. Here the survivors were detained among the Indians for six years. Finally Cabeza de Vaca, the treasurer of the expedition, succeeded in escaping, and, having joined several of his companions, led them, after many extraordinary adventures, to a Spanish town in Mexico. There they told the tale of the perils they had survived. They were doubtless the first Europeans to behold the Mississippi.\*

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\*The famous discovery of the Mississippi by Pineda in 1519 seems to have proved a myth, and the followers of Narvaez deserve that honor. See Dr. Scaife's Monograph in *J. H. U. Studies: Extra Vol. XIII*.

**2. Coronado's Expedition.**—Along with the story of their adventures, De Vaca and his companions related that the Indians had told them of immense herds of wild cows (buffalo or bison), which ranged over the plains of the north; and of the “seven cities of Cibola,” where there was abundance of gold and silver, and where the doorways of the houses were ornamented with precious stones. Aroused by these tales, Mendoza, the Viceroy of Mexico, sent out an army under Francisco Vasquez Coronado to subdue this wealthy country. For two years (1540-1542) Coronado wandered about in search of treasures, but found none. He penetrated, it is believed, to the boundary of the present State of Nebraska. He saw the herds of buffaloes, and conquered many of the Indian villages called pueblos, but he was compelled to return home with no other fruits of his long marches.

**3. The Expedition of De Soto.**—The story of De Vaca's adventures stirred the spirit of another explorer, who, a few years later, was to penetrate far into the interior of the continent and to become the second discoverer of the great river. This was Hernando De Soto.

De Soto's ambition was to make himself master of the country which Narvaez had failed to conquer. Accordingly, in 1539, he sailed from Cuba and landed in what is now Tampa Bay. He had with



HERNANDO DE SOTO.

him more than six hundred men, well armed and provided with a number of cannon to frighten and subdue the natives. These, as a result of the haughty, overbearing conduct of the Spaniards, soon proved themselves either treacherous friends or open enemies. It was not long before De Soto's dream of conquering a great kingdom and carrying back to Spain vast treasures from the Land of Flowers began to grow dim. The Indians frequently cut off his men when they wandered from the camp, and on more than one occasion De Soto's own life was in danger. But he knew no fear, and courageously marched on in search of the gold and pearls which the natives assured him could be found if he would only penetrate farther to the north. The savages doubtless adopted this as a skillful method to rid themselves of their unwelcome visitors; for De Soto never found any treasures except a few little pearls, which were given to him by one tribe and taken from him by another.

**4. His Journey Northward.**—Marching through the present States of Georgia and South Carolina, the Spaniards finally reached the Tennessee River. They had been pursuing a will-o'-the-wisp, and many months had been consumed in the weary journey. De Soto then changed his route and marched southwest to Mavilla (now Mobile), on the Alabama. Here, in a fierce conflict with the Indians, he lost a number of his men, and malaria carried off a great many more. But as he had sent back his ships to Havana, his followers could not desert him. In the third year of the expedition, he marched from Mobile to the northwest, until, at a point somewhat below the present City of Memphis,

he reached a great river. This proved to be no other than the Mississippi. It must have been swollen by heavy rains so that it overflowed its usual banks, for, in their account of the expedition, the Spaniards say it was one and one-half miles wide, and "if a man stood on the opposite bank, no one could be sure if it was a man or not." To this broad stream De Soto gave the name of *El Rio Grande de la Florida* (the Great River of Florida).

**5. His Death.**—Crossing the river on rafts, De Soto wandered around till he reached the mouth of the Red River. Here, worn out by the privations of the long journey, by anxiety for the safety of his men, and above all by bitter disappointment, the great explorer fell sick and died. As there were hostile Indians near by, and it was feared that the death of the chief might incite them to attack the survivors of the expedition, the body of De Soto was concealed for a few days, and was then placed in the trunk of a tree, which was weighted and sunk to the bottom of the Mississippi. Thus in that mighty river of which he is called the discoverer, De Soto found a resting place after his weary wanderings. Proud, stern, and indefatigable, he seemed born to lead men through dangers and misfortunes; but his expedition had been one of failure and disaster.

**6. De Soto's Successor.**—His successor, Luis de Moscoso, after seeking Mexico in a long but fruitless journey to the west, returned to the Mississippi. Here he and his men built seven brigantines, which they launched upon the river. All their powder was now exhausted, and the Indians, growing bolder,

attacked them as they sailed down the stream. Finally, however, the mouth of the Mississippi was reached, and, after coasting along Texas for nearly fifty days, the wanderers reached the Tampico River in Mexico. Here they were welcomed by some of their countrymen, and heard once more their native tongue. They were bronzed by the sun, and exhausted by the dangers through which they had passed. Clothed in the skins of wild animals and emaciated by hunger, they hardly looked like human beings. For three years they had been in the wilderness, and scarcely more than one-half of their original number had survived. The old chronicler ends his story of their journey and their safe arrival with a fervent *Deo Gratias!* Thanks to God!

**7. Result of the Spanish Explorations.**—So great was the disappointment caused by the failure of De Soto's expedition that Spain attempted no further exploration of the Mississippi Valley. The Spanish king was reaping a rich harvest of wealth from the possessions he had acquired in Mexico and Peru, and he thought it wise to discourage the few adventurers who proposed to follow in the footsteps of De Soto. As late as the beginning of the seventeenth century, only two settlements had been made by Spain in what is now the United States. These were St. Augustine, on the coast of Florida, and Santa Fé, in what is now New Mexico.



## CHAPTER II

### THE FRENCH EXPLORERS

**8. Marquette and Joliet.**—One hundred and thirty years passed before any further attempt was made to explore the giant river on whose bank the adventurous De Soto had lost his life. And now the French were to take up the task that the Spaniards so many years before had abandoned in despair. In the year 1673 the Intendant of Canada, which had already been colonized by France, was a certain Monsieur Talon. Having heard from the Indians of a great river which flowed towards the south, and which they called the Meschacebe (great river), Talon determined to send out explorers to follow its course to the sea. His plan was approved by Frontenac, the Governor of Canada. Their choice fell upon a trader named Joliet and a priest named Marquette. The latter, who spoke six Indian dialects, was more than willing to devote himself to a task which might give him opportunities to convert the savages to the Christian faith. "When Joliet came with an order for me to accompany him," he tells us, "I found myself in the happy necessity of exposing my life for the salvation of all these tribes."

**9. Marquette and Joliet Descend the Mississippi.**—With five companions these bold explorers penetrated to the Wisconsin River, and rowed down it in their birch-bark canoes till they reached the

Mississippi. They descended the river rapidly, observing the plants and trees along its banks and casting their nets in its waters for the fish they needed. With the Illinois Indians they smoked the calumet, and the priest seized the opportunity to tell them of the holy religion he wished to preach among them. Then, breathing a prayer that his ministry might touch their hearts, Marquette, with his companions, continued the voyage down the river. On they went beyond the mouth of the turbid Missouri, on past the mouth of the Ohio, until finally they camped near the mouth of the Arkansas. Here, assured by the Indians that the river flowed into the Gulf of Mexico, and that, if they continued, they might suffer death at the hands of the Spaniards, Marquette agreed with Joliet that it would be best to return to Canada. Marquette called the great stream the River of the Immaculate Conception.

**10. The Return of the Explorers.**—Stemming the current with their canoes, they returned to Lake Michigan, having traveled in all more than twenty-five hundred miles. When Joliet told his tale of adventure, there was great rejoicing in Canada. The French already dreamed of seizing the new territory thus opened to them, and of making their possessions extend from the St. Lawrence to the Gulf, into which the Mississippi flowed.

**11. La Salle.**—The success of this voyage stirred the ambition of another Frenchman, whose name will always be linked with that of Louisiana. This was Robert Cavelier, *Sieur de La Salle*, a bold and daring adventurer, bent on winning for himself a name and

a fortune in the New World. His plan was to set out from Canada, take possession of the Mississippi Valley, and build a line of forts along the river to secure the country to the French. Having received assistance from the French king, the famous Louis XIV., La Salle associated with himself Henry de Tonty—Tonty of the Iron Hand,\* an Italian soldier as brave as himself—and made preparations for his voyage. After overcoming many obstacles, the explorer and his followers reached the Mississippi by the way of the Illinois and began their voyage down its swift current. In dealing with the Indians along the route, La Salle showed consummate skill. Just below the mouth of the Arkansas, he found a tribe from whom the river received its name. Here he set up the arms of the King of France, thus taking formal possession of the country. "These Indians," says a narrative of the expedition, "have cabins made of the bark of cedar. They have no other worship than the adoration of all sorts of animals. Their country is very beautiful, having abundance of peach, plum, and apple trees. We found buffaloes, bears, and turkeys, and they even had domestic animals. When we departed, they gave us guides to conduct us to their allies, the Taencas (Tensas), six leagues distant."

**12. La Salle Reaches the Gulf.**—Finally, on April 6, 1682, the adventurous explorers reached the mouths of the Mississippi. Never since the disastrous voyage of Muscoso, one hundred and forty years before, had a European followed the great river to its mouth

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\*Tonty had lost a hand, but he had replaced it with one of iron, which he sometimes used to crack the skulls of the savages.

and gazed upon the Gulf of Mexico. Great was the joy of La Salle and Tonty.

**13. The Naming of Louisiana.**—The three channels of the delta were carefully examined; then, choosing an elevated spot above the west pass, La Salle erected a cross and a column. After the *Te Deum* had been chanted, a proclamation was placed upon the column, by which the commander, in the name of Louis XIV., took possession of the whole vast territory “watered by the Colbert or Mississippi and its tributary rivers,” and gave to it the name of Louisiana. At the foot of the tree to which the cross was affixed, La Salle buried a leaden tablet, with the arms of France on one side and on the other a Latin inscription.\* Thus it was that the French announced their claim to the broad country which stretched from the sources of the Mississippi to the Gulf, and gave it a name which one portion of it bears to the present day.

**14. La Salle's Later Career.**—The rest of La Salle's history must be briefly related. Having returned to France, he fitted out an expedition to colonize Louisiana. Unfortunately, however, after sailing through the Gulf of Mexico, he missed the mouths of the Mississippi, and, landing on the coast of Texas, began a settlement far to the west of his original destination. Subsequently he lost his life at the

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\*The inscription, translated, runs: “Louis the Great reigns. The 9th of April, 1682, Robert Cavelier, with the Sieur de Tonty, a priest and twenty Frenchmen, was the first to navigate this river from the village of the Illinois down, and to make a passage through its mouth.”

hands of one of his own treacherous followers. Daring in spirit, but suspicious and imperious in temper, he failed to win the love of his subordinates. His brief career casts a ray of romantic light across the early history of Louisiana.

## CHAPTER III

### THE COLONIZATION OF LOUISIANA

The failure of La Salle to colonize the banks of the Mississippi did not long discourage the French. There were among that people many other valiant men who were ready to go forth into what was then a wilderness; who were willing to brave all the dangers of a country where they would be separated from friends and kindred, and where they would be constantly exposed to the tomahawk and the scalping-knife.



PIERRE LE MOYNE  
D'IBERVILLE.

**15. Iberville.**—After the disastrous peace of Ryswick (1697), by which France lost nearly all her conquests in Europe, Louis XIV. thought it wise to secure Louisiana against the encroachments of the English. Accordingly, in 1698, Pierre Le Moyne d'Iberville was chosen to lead another colony to Louisiana. By birth a Canadian, Iberville had distinguished him-

self as a naval commander in several battles with the English. He was well fitted for the enterprise with which he was now entrusted.

**16. The Colony Crosses the Atlantic.**—Four ships, two of them transports loaded with supplies and presents for the Indians, were given to him, and with these he set sail to convey two hundred emigrants to the New World. After touching at St. Domingo, the French sailed over to Pensacola. As this port was already occupied by the Spaniards, with whom he wished to keep on good terms, Iberville sailed on to Mobile Bay, where he cast anchor. Here there was no one to interfere with a settlement, unless it were the Indians, and these he found to be of a friendly disposition as long as they were well treated.

**17. The Mississippi Entered.**—The French cruised among the islands off the coast, and then, launching their boats, they set out to discover the mouths of the Mississippi. Iberville was accompanied by his brother, the young *Sieur de Bienville*, afterwards famous as the founder of New Orleans, and by *De Sauvolle*,\* who afterwards became the first governor of Louisiana. Sailing through a group of islands, which they named *Chandeleur*, the Frenchmen finally crossed a strong current running out into the Gulf. When they tasted the water, it proved to be fresh. Very quickly they came to a muddy stream, which they thought they recognized from *La Salle's* description as one of the mouths of the Mississippi. Tall reeds were seen in abundance, and the banks were lined with immense logs brought down by the mighty current. This was March 2, 1699, seventeen years after *La Salle's* expedition down the river from

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\*This *Sauvolle*, though he bore the same name as one of *Iberville's* brothers, was not a relative.

Canada. The crews of the boats now landed, and appropriate religious ceremonies were held by an accompanying priest. Once more a *Te Deum* was chanted at the mouth of the Mississippi. No such music had been heard there since the brave but unfortunate La Salle stood upon its banks.

**18. The Voyage up the River.**—Embarking once more, the explorers rowed up the river as far as the mouth of Red River. During the voyage they landed from time to time at Indian villages, and Iberville, though he hated tobacco, found it necessary to smoke the calumet with the friendly chiefs. On their return, Iberville sent his companions back by the same route, but he himself, with an Indian guide and three attendants, rowed down Bayou Manchac and through Lakes Maurepas and Pontchartrain\* to the Rigolets. By this route Iberville reached his ships a little before the party coming down the river.

**19. The First Capital.**—As he had found no spot on the banks of the lower Mississippi that was not subject to the annual overflow of the river, Iberville decided to build a fort on the east side of Biloxi† Bay, in the present State of Mississippi (a site now occupied by the town of Ocean Springs). This little fort may be called the first capital of Louisiana, for many years elapsed before Bienville founded New Orleans. In command of the new fort Iberville placed De Sauvolle, who thus became the first governor of Louisiana ; and next to him in rank was Iberville's brother, Jean Bap-

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\*Iberville named Lake Pontchartrain after the Minister of the Marine, and Maurepas after the minister's son.

†Biloxi, named after a tribe of Indians.



tiste Le Moyne, Sieur de Bienville. Having made these arrangements, Iberville set sail for France.

**20. The Prospects of the Colony.**—The advantages of the new country had already been described in glowing colors by De Remonville, a friend of La Salle; and it was believed that France would draw a rich revenue from the colony. The climate was declared to be almost perfect, there being little or no cold weather. The fertile hills and dales would produce two crops of Indian corn a year, while the woods were filled with game and every kind of wild cattle. On the plains of Texas, then regarded as a part of Louisiana, horses ran wild, or they could be purchased from the Indians for a few trinkets. The skins of buffaloes and other wild animals would be an article of trade with the Indians, and could be shipped to the mother country in large quantities. The lofty forests that covered a large part of the country would, when felled by the colonists, furnish masts and timbers for whole fleets of ships. The land, thus cleared, would produce an abundance of tobacco and long-staple cotton. But above all, rich mines of lead, tin, and copper would reward the diligent explorer.

**21. Sugar Cane.**—Such was the prophecy made for Louisiana. Of the sugar cane, which one hundred years later, under the skillful management of Etienne de Boré, was to be a source of such wealth and prosperity, hardly any mention was yet made. On one of his excursions to Lake Pontchartrain in 1700, Iberville planted some sugar canes from St. Domingo, but unfortunately they were already sour, and the pith had turned yellow. In speaking of the

experiment, he writes: "I set out several plants from St. Domingo, and they all succeeded except the sugar canes, which did not come up."

**22. The Visit of the English.**—On the departure of Iberville, Sauvolle, finding that the colony was in need of many necessities of life—for many years a chronic state of affairs—sent a vessel over to St. Domingo to procure provisions. When this was done, he thought it wise to conciliate the Indians, who were within easy reach of the fort. Accordingly, young Bienville, who was brave and fond of adventures, was sent out with exploring parties. Visiting the shores of Lake Pontchartrain and the banks of the Mississippi, he soon learned to know the country and to speak the language of the natives. On one occasion, as he was descending the river, he met an English vessel armed with sixteen guns, which had been sent to explore the Mississippi. Bienville, with ready wit, went on board, and, by representing to the captain that the French were already in possession, induced him to retire. The place of this meeting, some distance below New Orleans, is still called the "English Turn." It is interesting to speculate what would have been the fate of Louisiana if it had been colonized by the English. Certainly its whole history during the eighteenth century would have been very different. When Iberville heard of this adventure, he built a fort fifty-four miles above the mouth of the river to keep out all intruders, and placed Bienville in command. This was the first establishment of the French within the present limits of Louisiana.

**23. State of the Colony.**—In the meantime the

colony at Biloxi was not in a flourishing condition. When the provisions from France and St. Domingo were exhausted, there was little to eat except what game could be killed or what fish could be caught, and most of the colonists seem to have been too lazy even to hunt and fish. Sauvolle has left us a journal of his experiences as governor, and a sad story it tells. He complains bitterly of the behavior of the colonists, saying that they often refused to obey his orders, and, when any serious work was to be done, he had to go himself, pull them out of their beds, and stand by them till the work was finished. To add to the general discontent, heavy rains continued to deluge the country, and with them there came a terrible malady, which, it is now believed, was no other than the dreaded yellow fever of our own day. In a very short time not only was the colony reduced from two hundred to one hundred and thirty-nine persons, but Governor Sauvolle himself, after heroic exertions to make the settlement a success, took the fever and died.

## CHAPTER IV

BIENVILLE GOVERNOR. FIRST TERM, 1701-1713

**24.** The Transfer of the Capital.—After the death of Sauvolle, Bienville was placed at the head of the colonial government. Both he and Iberville saw that, if the colony was ever to succeed, there must



GOVERNOR BIENVILLE.

be cultivation of the soil. Unfortunately, however, the land around Biloxi was far from fertile. There were long stretches of sand which reflected the sun and injured the eyes of the colonists, while the plants that were set out never seemed to flourish. Accordingly, Iberville determined to leave Biloxi and transfer the colony to the west bank of the Mobile River. Here a fort was built of consider-

able dimensions. Some time after, however, the river having overflowed its banks, the fort was so badly inundated that it had to be abandoned. Another fort was now constructed on a creek of Mobile Bay. The ruins of this fort were for a long time visited by travelers, but they have finally disappeared. At the new fort famine did

not fail to make its appearance. In the meantime, France could do almost nothing for the colony. She was carrying on with England the War of the Spanish Succession, in which, while losing all the battles, she was expending all the money that could be wrung from the French people.

**25. Wives for the Colonists.**—In 1704, however, a pleasant little incident brought some excitement to the settlement at Mobile. A ship with provisions, arriving from France, conveyed to Bienville a letter from the French Minister, announcing that his Majesty, Louis XIV., had determined to send over twenty young women of modest behavior and honest life, who had been selected as wives for the colonists. This band of young women, the first that came to the colony, received a hearty welcome. Almost as soon as they arrived, they were provided with husbands; and though they afterwards rebelled against the coarse fare of Indian corn to which they were subjected, they seem to have lived happily in their new homes. In 1704 the first white child was born in the colony. This young Creole was christened Jean François Le Camp.

**26. Internal Dissensions.**—The complaints about the coarse fare were not the only annoyances that disturbed the equanimity of Governor Bienville. There was a bold priest at Mobile who did not hesitate to accuse the governor to his face of misappropriating and wasting the public stores. He and a certain M. De la Salle sent over so many complaints to France that in 1707 the government decided to remove Bienville. There seems to have been no truth in the

charges preferred against the governor, but he had no longer at the French court his brother Iberville to defend his character. That famous explorer had died at Havana of the yellow fever. The successor of Bienville was a Monsieur Muys, but he died on his way to Louisiana; and D'Artaguet, who was sent over as commissary, found Bienville so popular among the colonists that he allowed him to continue to act as governor.

**27. Lack of Prosperity.**—Still, the misery of the inhabitants continued to increase. They did raise a little tobacco around Mobile, but they were always praying for provisions from France or borrowing them from the Spaniards at Pensacola. Bienville wrote that they would soon have to live on acorns. In fact, many of the young men were allowed to leave the settlement and live among the Indians, by whom they were kindly received and supplied with all they needed. In the Indian camps they learned how to track the deer and to join in the weird dances around the fire at night. This wild kind of life was far more agreeable than tilling the soil about the fort, but it was far less profitable.

**28. The Grant to Crozat.**—The young governor now learned that Louis XIV., worn out by the terrible conflict with England and by the burden of old age, was looking about him for some one who would undertake the task of managing the large but unremunerative province of Louisiana. Such a person was discovered in Sieur Anthony Crozat, a great banker of France, who vainly imagined that he could increase his already large fortune by obtaining exclusive control of the

commerce with the new colony, and above all by working the mines of gold and silver which were confidently believed to exist within its borders. Accordingly, letters patent were issued to the new proprietor, giving him, under certain conditions, exclusive control of the trade of the province as far north as the Illinois, while the king stipulated that the royal treasury should receive a share of the profits from the mines of gold and silver and precious stones. This grant was made in 1712.

**29. De la Mothe Cadillac, Governor.**—The governor now placed over the province was M. Cadillac, and the office of lieutenant-governor was conferred on Bienville. Cadillac, to whom Crozat had promised a certain percentage of his profits, had great schemes for opening an extensive trade with Mexico, and of discovering rich mines along the Mississippi. Trading posts were established, the most important one being on the present site of Natchitoches, under St. Denis, one of the most romantic characters in early Louisiana history. But the Spaniards were suspicious of the French, and, with the short-sighted policy of that day, wished to keep the Mexican trade to themselves.\* As to the mines, lead, iron, and copper were to be found in Louisiana, but Cadillac soon discovered it would cost more to work the mines than they were worth.

**30. The Natchez War.**—In the meantime the Natchez Indians had killed some Frenchmen, who had fallen into their hands. The governor, who had quarreled with Bienville, and doubtless wished to get

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\* The only trading privileges granted by the Spaniards were to the English.

rid of him, sent the young man with a small force to chastise the troublesome savages. This task Bienville accomplished by means of strategy. Decoying the chiefs into a conference, he held them captive until he had compelled the tribe to submit to all his demands. Throughout the campaign he exhibited an ability that stamped him as a consummate commander. When Bienville returned, he found that Cadillac had been recalled, and that he himself had been again placed at the head of affairs, pending the arrival of the new governor, M. De l'Epinay.

**31. Crozat Resigns His Charter.**—Under the new governor (1717), there was no greater prosperity than under the old one. It is not surprising, therefore, that Crozat grew weary of his expensive province. His monopoly of trade had brought him no great income, and the ships he sent out had cost him a large part of his fortune. Accordingly, he determined, by the resignation of his charter, to restore the province to the King.



## CHAPTER V

### THE COMPANY OF THE WEST, 1717

**32. The New Charter.**—Louis XV. was now King of France, but, as he was too young to rule, the reins of government had fallen into the hands of his uncle, the Duke of Orleans, as regent. The French government, unwilling to accept so heavy a burden upon the royal purse, decided to transfer the Province of Louisiana from Crozat to a newly chartered company, whose wild speculations ended in the famous Mississippi Bubble. At the head of the new company, which was afterwards incorporated with the Company of the Indies, was a Scotchman named John Law, who, after a reckless and extravagant career in London, had transferred the scene of his operations to Paris. Here, by bold financial schemes, he hoped to recruit his ruined fortunes. France, exhausted by war and overwhelmed with debt, eagerly adopted any plans that promised to fill the empty treasury. What a splendid opportunity this great Province of Louisiana offered to the fertile brain of John Law! Its commerce, its mines of gold and silver, he declared, would, if properly managed, pay off the national debt of France and make the fortune of all the stockholders. The charter of the company\* was to last twenty-five years, during

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\*The Illinois district, which, under Crozat's charter, was dependent upon Canada, was now (1717) incorporated with the government of Louisiana, but it was governed by a special officer. Under the Company of the West, the first commandant placed over the district was Pierre de Boisbriant.

which time the directors bound themselves to send over 6,000 white persons from France and 3,000 negroes from the coast of Africa. In the *Journal Historique*\* it is stated that there were at this time (1718) in the colony 700 persons and 400 cattle, but that the cultivation of the soil was still neglected. The garrison and the colonists preferred to trade with the Indians, and with the Spaniards at Pensacola, which trade brought them twelve thousand dollars a year. "It would have been better," continues the *Journal*, "to build on the banks of the Mississippi and live by the cultivation of tobacco, indigo, silk, rice, and other kinds of grain."

**33. New Orleans Founded, 1718.**—In 1718, Bienville, who had been reappointed governor when the Western Company took possession, determined to carry out a plan which he had long nourished of making a settlement on the banks of the Mississippi. The land in the neighborhood of Biloxi and Mobile was not well suited for agriculture, while he knew the alluvium of the Mississippi Valley to be of extraordinary fertility. Fifty men, therefore, were sent over to the Mississippi, with orders to clear away the thick undergrowth and to build barracks for the soldiers. The spot chosen by Bienville was within easy reach of Lake Pontchartrain and not too far from the mouth of the river. The site, unfortunately, was both low and marshy. It seemed the natural abiding place of the bittern and the alligator; but the buildings were erected, and Bienville gave to the new settlement the name of *La Nouvelle Orléans*, in honor of the Duke of Orleans, Regent of

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\*Author supposed to be a geographer named Beaurain.

France. Bienville would have been happy to move the capital from Mobile to the new establishment without further delay, but in this matter he met with violent opposition from the general manager of the company, M. Hubert, who maintained that New Orleans was subject to overflow, and that the mouths of the Mississippi were too shallow to admit large vessels. For a while Hubert's opinion prevailed, and, as Mobile was an inconvenient point to receive the crowds of immigrants who were pouring in, the company decided to move their headquarters back to the old location on the east side of Biloxi Bay. When the fort here was accidentally burned, a new one was built on the west side of the same bay, and received the name of New Biloxi.

**34. Pauger's Report.**—In 1722 a French engineer named Pauger was sent to make an examination of the mouths of the Mississippi. In his report he declared that in the southeast pass he had found eighteen feet of water—a sufficient depth for large vessels. He further declared that the mass of sand at the mouth of the pass would be swept away by the current, if dikes were built along the sides of this pass, and the other passes were blocked up with sunken vessels and cypress logs. This report is especially interesting because in our own day the plan suggested by Pauger has been successfully carried out in the Eads Jetty system of the South Pass. Through the pass of the Balize, Bienville now sent a large vessel at his own risk, thus convincing the general manager that ships of heavy burden could go up to New Orleans.

**35. Charlevoix at New Orleans.**—In 1722 a

priest named Charlevoix came down the Mississippi and visited New Orleans. In his description of it, he says that some two years before the newspapers in Europe had described the town as possessing two hundred fine houses, but that, on his arrival, he could find only a hundred barrack-like buildings, placed about in no great order. There were, besides, a large store-house built of wood, and two or three residences which would be no ornament to a village in France. In spite, however, of its sorry appearance, the good priest seemed to foresee, with a prophetic eye, the future greatness of the little settlement; for he adds: "I have a well-grounded hope that this wild and desert place, which the reeds and trees do yet almost wholly cover, will be one day—and perhaps that day is not far distant—an opulent city and the metropolis of a great and rich colony." The same year in which Charlevoix visited New Orleans, Bienville's advice was at last accepted, and all the stores of the company were transferred to the new settlement on the banks of the Mississippi. In spite of the many difficulties he had yet to encounter, Bienville never had occasion to regret the step he had taken.

**36. Immigration.**—Large grants of land were now made to prominent families of France, who promised to send over colonists to occupy them. Of the settlers thus sent over, many perished in the wild swamps of Louisiana; others maintained a precarious existence by trade with the Indians. It was a repetition of the early history of Virginia and Massachusetts. Law himself, the president of the company, had received as his share a grant of twelve miles

square on the Arkansas. To this he sent over a large number of honest German settlers. Worn out by hardships, however, these afterwards came down to New Orleans and prayed to be sent back to their own country. With some difficulty they were persuaded to seek homes in the parishes just above the city. Here they prospered, and here their descendants are to be found at the present day.

**37. Slaves.**—In 1719\* the first cargo of slaves, five hundred in number, reached Louisiana from the coast of Africa. Later on, many more of these unfortunate people were brought over; but, while they added to the wealth of the colony, they became a source of fear and danger, and eventually they retarded the development of the country. With some of this first cargo of slaves the company began to lay out and cultivate a plantation opposite to New Orleans.†

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\*Just one hundred years after the first cargo landed at Jamestown, Virginia

†The price of a slave at this period was only \$150.

## CHAPTER VI

### THE COMPANY OF THE WEST (CONT.)

**38. The Bubble.**—In the meantime Law, by his magnificent promises, had inflated the stock of the company in Paris till it sold for forty times its par value. There followed a wild carnival of speculation, in which men and women alike participated. But the day of reckoning was near at hand. No money came from Louisiana to pay large dividends. Some of the speculators began to suspect that they were the victims of a gigantic fraud. This suspicion was followed by a panic and a “run” on the bank of the company. Thousands of the creditors were ruined in a day. Law himself, his carriage torn to pieces by the mob, escaped with difficulty to take refuge in Italy. When the news of this collapse reached Louisiana in 1721, the paper money issued by the company fell in value until it was nearly worthless, and the colonists were on the verge of despair. The company, however, though it had lost its president, continued for eleven years to do what it could to advance the interests of the colony.

**39. Organization.**—For religious purposes the province was divided. All the country above Natchez was transferred to the care of the Jesuits, while New Orleans and the district south of Natchez were placed under the control of the Capuchins. There was much contention between these two orders, and the Jesuits,

in course of time, came to New Orleans and established themselves there. For governmental purposes the province was divided into nine districts, each under the control of a commander and a judge, or by one person holding both offices. These districts were as follows: District of the Alibamons, of Mobile, Biloxi, Yazoo, Illinois and Wabash, Natchitoches, Natchez, and New Orleans. A superior council at New Orleans, however, with the governor as nominal president, was the highest tribunal of the province. Thus the principle of organization began to make itself felt in Louisiana, but there was none of that admirable self-government which existed at this period in the English colonies of Virginia and Massachusetts. Louisiana had no representative assembly. Everything was determined in France. Hence all the laws were external to the colonists. Herein lay the source of failure that attended the colonial system of both France and Spain.

**40. The Indians.**—In spite of the opposition he often encountered from the officers of the company, Bienville had been very successful in governing the colony, and especially in protecting it against the Indians. About this time, however, the Natchez began to give trouble once more. News reached New Orleans that they had murdered some Frenchmen whom they had captured. Bienville's method of punishing the savages was not only treacherous, but also most unwise. He first patched up a peace with them, and then falling upon them, he brought back to New Orleans the heads of the offenders. Naturally the desire of this tribe for vengeance never slept. In

fact most of the tribes in Louisiana began to look upon the French with growing suspicion, for they seemed to foresee the day when they would have to relinquish their lands to the foreigners. Hence quarrels grew more frequent. Little bands of savages would descend in the night upon the more remote settlements, and carry off the scalp of every man, woman, and child. The French, unlike the Spaniards at a later day, made too little effort to win the friendship of their red-skinned neighbors. They began to treat the savages just as the latter treated the whites. Governor Perier, for instance, having taken some Indian prisoners, burned some of them alive, and sent many of them to be sold as slaves in San Domingo. Such a spirit of retaliation bore bitter fruit.

**41.** Recall of Bienville.—In 1724 Bienville, who had many enemies among the agents of the company, was summoned back to France. He was accused of having looked after his own interests and neglected those of the company. It was even maintained that while he was governor, he had succeeded in laying up a large fortune. It seems certain, however, that when he returned to France after nearly twenty-seven years of service, he was worth only \$12,000—a sum that must be regarded as insignificant when we consider how much he had labored for his country. In Bienville's place an officer named Boisbriant was appointed temporary governor, until Perier, the new governor, should arrive.

**42.** The "Casket Girls."—The second year of Perier's administration is made memorable by an interesting event. Many of the women sent over to



Louisiana had proved to be neither respectable nor useful members of the colony. The province, more than once, had been made a place of refuge for vagabonds both male and female. But in 1727 there came over a number of poor but reputable girls as wives for the colonists.\* Each of them was provided with a little box containing all her worldly belongings. From this fact they received the name of casket girls (*filles à la cassette*.) They were placed under the care of some Ursuline nuns, who had come over to take charge of the hospitals and the female schools. With them the "casket girls" remained till they were sought in marriage by the young men. They had not long to wait. In fact wives were so scarce in Louisiana that some of the men, much to the disgust of the priests, intermarried with the soft-eyed Indian maidens.

**43. The First Levee.**—The same year (1727), Gov. Perier wrote as follows to the French government: "I have had constructed in front of New Orleans a levee 900 feet in length and 18 feet thick. Other levees will be built this year from 18 miles above the city to a point 18 miles below. These, though not so strong as the city levee, will prevent the Mississippi from overflowing the country." Such was the humble beginning of the great levee system that now confines the waters of the river.

**44. The Natchez Massacre.**—Perier's administration, however, was marked by warlike as well as peaceful events. At Fort Rosalie in Mississippi, the Natchez Indians, infuriated by the overbearing con-

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\* A similar band, as we have seen, had been sent over in 1704.

duct of the commander of the fort, who tried to rob them of one of their villages, fell upon the garrison and the settlement with terrible ferocity. At least two hundred scalps were taken, and many women and children were carried off into captivity. Great was the excitement in New Orleans when the news of this disaster reached the city. To avenge the massacre Perier fitted out a large expedition and marched against the Natchez, but though he managed to capture a number, the wily savages showed remarkable strategy in carrying on the campaign. Each time that they seemed on the point of being crushed, they would slip through the lines of the French and disappear. Their last stand was on what is known as Sicily Island in the upper portion of the State. Here they were forced to give up their women and children, but the majority of the warriors escaped and took refuge with the Chickasaws. If they had been better treated they would have proved valuable friends to the French.

**45. Slave Insurrection.**—At this period, also, the increase in the number of the slaves began to menace the peace of the colony. Many of them had been armed by their masters and had fought with bravery against the Indians. They now formed a conspiracy—and it was not the last in the history of Louisiana—to obtain their freedom. The attempt, however, was a signal failure and the ringleaders were put to death.

## CHAPTER VII

### LOUISIANA ONCE MORE A ROYAL PROVINCE

**46. Bienville's Third Term.**—In 1731, the company, which had for fourteen years controlled the destinies of Louisiana, grew so weary of the Indian wars that the province was once more restored to the king. No better man than Bienville could be found to act as governor, and so after eight years' absence, the Father of the colony returned to his old post. When he reached Louisiana he seems to have been desirous to win fame for himself and at the same time to secure the peace of the colony by an expedition against the Chickasaws in Northern Mississippi. These Indians, it will be remembered, had given refuge to some of the scattered Natchez. In 1736 the expedition was made, but the Chickasaws proved to be well fortified, and, with the assistance of the English, they succeeded in repulsing Bienville's attack on their stronghold. His loss was so great that he determined to retreat; while the savages burned their captives over a slow fire. Humiliated by this first defeat, Bienville raised a larger army with the intention of crushing out the whole tribe of Chickasaws. Again, however, the campaign was disastrous for the French, and Bienville was forced to make peace with his former enemies. Imagine the feelings of the old warrior when he had to admit to his government that he had been twice defeated by a tribe of undisciplined savages!

All he could say was that Fate seemed to be against him, and that he did not care to struggle any longer against such misfortunes.

**47. The Recall of Bienville.**—Accordingly in 1742, he asked to be recalled, and when his successor, the Marquis de Vaudreuil, arrived in Louisiana, Bienville left the colony never to return. When he first came to Louisiana with his brother Iberville, he was only a stripling of eighteen. Brave and skillful in the management of affairs, he did more than any one else for the development of the colony during those early days of trial and disaster. When he left the city he had founded on the Mississippi, he was 62 years of age, and had grown gray in the service of his country. The increasing prosperity of the colony doubtless consoled him in some degree for those last unfortunate campaigns against the Indians.

**48. Vaudreuil Governor, 1743-1753.**—During the administration of Vaudreuil there were no great or stirring events in Louisiana. The governor made an attempt to punish the Chickasaws for all the trouble they had given ; but this brave tribe defended themselves with such success that once more the French had to retire from the struggle. The Creoles,\* however, fought so valiantly that Vaudreuil declared that if he had an army of these native Louisianians, instead of the troops from France, he could exterminate the Chickasaws.

**49. Internal Trade.**—During this period the population of Louisiana numbered about 6,000, of whom

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\* The name applied in Louisiana to the descendants of French or Spanish colonists.

4,000 were white. The trade on the Mississippi was already very profitable. The northern portion of the province sent down large quantities of leather, hides, and bacon, while the south sent in return tobacco, rice, indigo, and some cotton and sugar. Barges, laden with many kinds of commodities, floating down the river, came to ply their trade at New Orleans. Generally speaking there was more prosperity than ever before.

**50. Cotton.**—It was in 1740 that the planters began to grow small quantities of cotton, but it was so difficult to separate the seed from the fibre, that the crop was not very profitable, and there was little surplus over the home consumption. In Louisiana, as in the rest of the south, it was not till Whitney invented the cotton gin (1792), that cotton planting sprang into prominence as one of the great industries of our country. With his hands a slave could clean only six pounds a day, while with the aid of the gin the same slave learned to clean a thousand pounds a day.

**51. Sugar Cane.**—In 1751 the Jesuits introduced from St. Domingo some sugar canes, and brought over at the same time some slaves who were supposed to understand the manufacture of sugar. The Jesuit plantation was on the Mississippi within the present precincts of New Orleans. Seven years later M. Dubreuil, who was one of the richest planters in Louisiana, laid out an elaborate sugar plantation along what is now Esplanade Avenue. Here he built a sugar-mill, the first in the colony. As yet, however, the method of causing the sugar to granulate properly had not been discovered, and for a long time the

Louisiana product was very inferior. It was a waxy, gummy substance, which must have been very disagreeable to eat. From it, however, the planters manufactured a certain kind of rum called tafia, which enjoyed a certain popularity. When an attempt was made in 1765 to export some of this sugar to France, it leaked through the barrels in such quantities that the enterprise proved a failure. We shall find that in 1796 a revolution was produced in the sugar industry by the genius of Etienne de Boré.\*

**52. Kerlerec, Governor, 1753-1763.**—In 1753 Vaudreuil was made Governor of Canada, his position in Louisiana being taken by M. Kerlerec. The new governor's administration was marked by no very important events in the colony itself. He conciliated as far as he could the Choctaws, who had aided the French in the Indian wars, but who when they did not receive liberal presents, threatened to go over to the English and even to make war on their former

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\* A letter, written by Vaudreuil in 1744, which I have recently discovered among some old printed documents, is of interest as a picture of the times: "Nothing is wanted here," he writes, "but negroes, and some of them have been brought in this year. I have received four of them for my fees. I hope there will be an increase on account of the purchase I have made of a plantation which cost me 30,000 francs to be paid in four years. On it there are thirty-four strong, well-made negroes, all manner of buildings, and even a fine dove house stocked with one hundred pigeons. There are also fifty-seven oxen and cows, as many sheep, and the rest in proportion. There are 180 arpents of grubbed up land, which is plowed and sowed. I have built of bricks ten vats to make indigo, and hope the produce of four years will pay the principal. The dearth of provisions occasioned my buying the plantation. If you live in this place you must have one. Before I laid out anything on mine, I was offered 15,000 francs more than I am to give."

allies. In the meantime Kerlerec and his commissary quarreled bitterly, each accusing the other of wasting or misappropriating the public funds. The expenses of the colony in one year ran up to nearly \$200,000. When we examine the items for which this sum was expended, the conclusion is forced upon us that there must have been much speculation among the officials of that time. Who was guilty, it is difficult to say; but Kerlerec was summoned to France and promptly thrown into the Bastille. He died soon after his release.

**53. The Treaty of Paris, 1763.**—France could not afford so heavy a drain upon her treasury; for at this time she was engaged in a desperate war with England for the control of India and Canada (the "Seven Years' War"). Finally in 1759 Wolfe captured Quebec, and when that city fell into the hands of the English, it began to look as if the arms of France's ancient enemy would be every where victorious. By the Treaty of Paris, ratified February 10, 1763, Louis XV. agreed to transfer to Great Britain "all that portion of Louisiana lying *east* of the Mississippi except the island on which New Orleans stands." England supposed that France would retain possession of all Louisiana lying *west* of the river, but by a secret agreement signed November 3, 1762, Louis XV. had already presented this vast territory, together with the isle of Orleans, to his cousin Charles III. of Spain.

Nor does the French king seem to have felt any real regret in sacrificing to Spain the splendid province which the French had been the first to colonize, and

for which so many valiant Frenchmen had laid down their lives. Exhausted by the long war, he was unwilling to undertake the defence of a province which after all had not proved profitable, and by transferring it to Spain he hoped to put it beyond the reach of England.

**54. The Acadians.**—Before the formal transfer to Spain took place, and for some years after, Louisiana received as immigrants a large number of Acadians. These unfortunate people had dwelt in the French province of Acadia, or, as it is now called, Nova Scotia; but when this fell into the hands of the English (1713), the inhabitants were required either to leave the province or to take an oath of allegiance to the English king. The Acadians, though nearly all took the oath, were granted permission to remain neutral in wars between the English and the French of Canada or the Indians. At a later date, however, they were accused by the English of joining the enemy in attacks on the English settlements. A great deal of ill-feeling was the natural result; and, finally, in 1754, when the Acadians refused to take a stricter oath of allegiance, Lawrence, the English governor, decided to expel the whole population. The number that met this fate was about 6,000. Whether the governor's act was justifiable as a political measure has been disputed, but that the expulsion was accompanied by scenes of unnecessary cruelty is generally admitted. The exiles were scattered in many directions; but their hearts naturally turned towards the people of Louisiana, who spoke the same language as themselves and professed the same



religion. Down the Mississippi came some of them; others, from the West Indies; still others from their places of refuge in Europe, until several thousands had reached Louisiana. Being kindly received, they settled in the parishes above New Orleans and along the Teche. Here they found peace and prosperity, such as the fortune of war denied them in their native land, and here their descendants are still living. In Longfellow's "Evangeline" the story of their sad wanderings has been told to the music of exquisite verse.\*

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\* See sketch of the Acadians by J R Ficklen in *In Acadia* (New Orleans, 1893). See also Francis Parkman, *Montcalm and Wolfe*, Boston, 1894, vol. I. *passim*.

## CHAPTER VIII

### SPAIN TAKES POSSESSION

**55. The News Reaches Louisiana. Milhet.**—The cession of Louisiana to Spain was kept so profound a secret that the colonists themselves, except through vague rumors, knew nothing of it until the year 1764. In October of this year Governor D'Abbadie, who had succeeded Kerlerec, received a letter from the King of France, ordering him to be prepared to transfer the province to the accredited representative of Spain. Imagine what a shock this realization of their fears gave to the feelings of the colonists. Something, however, might yet be done. A convention was called to meet in New Orleans, and it was decided that Jean Milhet, the richest merchant in New Orleans, should be sent to France, there to plead at the foot of the throne, that Louis the Well-Beloved would annul the treaty of cession and would take back a colony which was bound to France by a hundred ties. When he reached Paris, Milhet was joined by the venerable Bienville; but their united prayers availed nothing. The Duc de Choiseul, himself the author of the cession, refused even to present their petition to the king.

**56. Ulloa, the First Spanish Governor.—The Uprising of 1768.**—Finally in March, 1766, four years after the secret treaty, the Spanish king sent over as governor of Louisiana Don Antonio Ulloa.

The new governor brought with him only ninety men. Instead of showing his credentials and taking formal possession of the province, he spent eighteen months awaiting reinforcements. During this time, his arbitrary conduct exasperated the Creoles to such a point that in 1768 a conspiracy was formed for his expulsion. The leader of the movement was Lafrenière, a man of noble figure and commanding eloquence. In an address to the council that has made his name memorable in Louisiana, Lafrenière persuaded that body to issue a decree, declaring Ulloa a "usurper of illegal authority," and commanding him to leave the province in three days.\* In the meantime D'Abbadie had died and had been succeeded by a new French governor, Charles Aubry. As Ulloa had never assumed formal control of affairs, Aubry continued to govern in the name of the King of France. He now made every effort to allay the excitement of the people; but his efforts were vain, and Ulloa was compelled to sail away to Havana.

**57. Independence Desired.**—It is noteworthy that before the expulsion of Ulloa, the Creoles sent a deputation to the English at Pensacola, asking their assistance in establishing a republic. The English governor, however, refused to entertain such a proposal, and the colonists felt too weak to accomplish

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\* An extract from this speech is worthy of quotation: "In proportion to the extent both of commerce and population is the solidity of thrones; both are fed by liberty and competition, which are the nursing mothers of the State, of which the spirit of monopoly is the stepmother. Without liberty there are but few virtues. Despotism breeds pusillanimity and deepens the abyss of vices. Man is considered as sinning before God only because he retains his free will."

their object without such aid. Thus the Louisianians dreamed of winning their independence eight years before Jefferson wrote the Declaration of 1776. After the departure of Ulloa the only recourse of the colonists was to appeal once more to France; but the court was, as before, deaf to their entreaties. In the meantime, the colony remained a prey to uncertainty and internal commotion.

**58. The Coming of O'Reilly.**—On the 24th July, 1769, however, the inhabitants were thrown into a state of intense excitement by the announcement that Spain had determined to assert her rights in Louisiana, and that Don Alexander O'Reilly, with a fleet and a force of several thousand men had arrived at the mouth of the river. In the presence of such a force all hope of resistance vanished.

At first the new governor was conciliatory in his behavior towards the former conspirators, and they in their turn made representations to him that the expulsion of Ulloa had been caused entirely by his failure to show his credentials and to take formal possession of the province. For a time all went well. The past seemed to be forgotten. Suddenly, however, O'Reilly had the leading conspirators arrested and tried before a court created by himself. Six of them were condemned to various terms of imprisonment, while five of the most prominent, including Lafrenière, being found guilty of high treason, were immediately shot. Such was the end of the so-called Revolution of 1768. The name of O'Reilly is naturally execrated by the French Creoles of Louisiana; but it seems certain that he was acting strictly under the orders of the King of

Spain. The real responsibility for this judicial murder, which casts a dark shadow across the annals of Louisiana, must fall upon the weak acquiescence of the French Court, which refused to interfere for the protection of a band of patriots whose only fault was their too great devotion to their king and his government.

**59. Political Changes.**—When the vengeance of Spain had been satisfied, O'Reilly began to change the government as it had existed under the French, by the substitution of Spanish customs and laws. The changes, however, were not so great as might be supposed; for both the French and the Spanish laws were largely drawn from the Roman code and hence bore a marked resemblance to each other. The legal language of the province was to be Spanish, but, according to Judge Martin,\* the use of French was to be tolerated in the notarial and judicial acts of the Spanish officers in the parishes. The French Creoles, of course, continued to speak their own tongue, just as they do at the present day. Instead of the old Superior Council, before which Lafrenière had spoken, O'Reilly established the Cabildo, the officials of which not only enacted certain laws, but also served as a kind of superior court. At first the highest offices were naturally held by Spaniards, but very soon the Creoles came to occupy the most important positions.

**60. Census of 1769.**—With his usual vigor O'Reilly set about making a census of New Orleans. The little city contained about 468 houses, with a

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\* *History of Louisiana.*

population of 3,191. Of these, the free persons numbered 1,901, the slaves 1,230, and the domesticated Indians 60. In the rest of the province there were about 10,400 persons.

**61. Unzaga, 1770-1777.**—When O'Reilly was recalled, he was succeeded by Don Luis de Unzaga. During his administration the Creoles began to submit with a good grace to the rule of Spain. At this period, moreover, the English colonies opened the war of independence with George III. As Spain was not well disposed towards England, the colonies were permitted to draw supplies from New Orleans, and thus Louisiana did what she could to aid the rising republic of which she was one day to form a part.\*

**62. The Monks.**—In New Orleans a famous quarrel arose between Father Cirilo, chief of the Spanish Capuchins, and Father Dagobert, of the French Capuchins. As each one wished to control ecclesiastical affairs in the colony, the contention between them waxed bitter. The colonists took sides; but the majority, including the governor, were disposed to favor the cause of Dagobert. This good priest, though he was self-indulgent and too ready to forgive sins, was beloved by all his parishioners, and the influence of Cirilo failed to dislodge him from the position he occupied.†

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\* The chief articles of commerce in Louisiana for the year 1769 were: Indigo, valued at \$10,000; rice, peas and beans, \$4,000; tallow, \$4,000; naval stores, \$12,000; lumber, \$50,000, and deer skins, \$80,000.

† The fame of Father Dagobert has been celebrated by one of our Southern poets, Mrs. M. E. M. Davis. From her "*Père Dagobert*," the following extract is taken:

“None of your meagre, fasting, wild-eyed, spare,  
Old friars was Father Dagobert!  
He paced the streets of the *vieux-carré*  
In seventeen hundred and somewhat, gay,  
Rubicund, jovial, round, and fat.  
He wore a worldly three-cornered hat  
On his shaven pate; he had silken hose  
To his ample legs; and he tickled his nose  
With snuff from a gold *tabatière*.  
He listened with courtly high-bred air  
To the soft-eyed *penitente* that came—  
Kirtled lassie or powdered dame—  
To kneel by the carved confessional,  
And breathe, in a whisper musical,  
The deadliest sins she could recall,” etc.

## CHAPTER IX

### SPANISH RULE CONTINUED

**63. Galvez, 1777-1785.**—When Unzaga retired, he was succeeded by the most famous of all the Spanish governors, Don Bernardo de Galvez. The American Revolution was now in progress, and Galvez continued the policy of his predecessor with reference to the war. The American agents were furnished with arms and provisions of all kinds, until the cost of the whole amounted to \$70,000. Moreover, as the ill-feeling between Spain and England now broke out in open war, Galvez immediately decided to win fame for himself and to aid his king by retaking East and West Florida, which by the treaty of 1763 had been transferred to England. The English had occupied Pensacola, and after building forts on the Manchac and on the Mississippi, they had made themselves extremely disagreeable to the Spanish government by smuggling goods across the river into Spanish territory. Having determined, therefore, to act on the offensive, Galvez raised an army of 1,800 men. Some of these troops were drawn from New Orleans; for the French Creoles were as eager for glory as the governor himself. From the country parishes the Germans and the Acadians flocked to his standard, and to all these the Governor added a number of Indians and a company of negroes.

**64. The Conquest of Florida.**—The details of this



campaign cannot be given. It must suffice to say that he was eminently successful in all his undertakings. First of all the forts at Baton Rouge and near by fell into his hands; then fort Panmure at Natchez; then, sailing to Mobile, he captured Fort Charlotte, and last of all—a brilliant exploit—he succeeded in forcing Pensacola to surrender (1781). When the treaty was signed at Paris in 1783, by which Great Britain acknowledged the independence of the American colonies, a formal transfer was made to Spain of East and West Florida (including all the territory east of the Mississippi and south of the 31st degree of latitude, except the island on which New Orleans stood).

Two years later the career of Galvez in Louisiana was ended by his removal to Mexico. He had governed the province with great ability and had endeared himself to the colonists by the noble qualities he had displayed both as general and governor.

**65. Miro, Governor, 1785-1791.**—Galvez was succeeded by Don Estevan Miro. Miro was a man of ability, and though he did not enjoy the popularity of the brilliant Galvez, he was highly esteemed by the Louisianians.

**66. The Inquisition.**—During Miro's administration Spain formed the bold design of rooting out all heresy in Louisiana by establishing in New Orleans a branch of the Spanish Inquisition. Accordingly a capuchin named Antonio de Sedella, who had come over from Spain, announced himself as the agent of that dreaded institution, and applied to Miro for soldiers to aid him in discovering and punishing heretics. Miro gave no answer; but that night the

monk was awakened by a knock at his door. When he opened it and saw some soldiers standing without, he imagined that Miro had granted his request. What was his surprise when he was seized by the rough troopers and immediately put aboard a vessel, which next morning sailed for Spain!\*

Miro explained his conduct to the king by declaring that if it was the design of Spain to foster the development of Louisiana, no inquisition must be established there; for it would surely be an object of dread to the inhabitants and it would prevent the increase of the population. This was the first and the last attempt to introduce this terrible tribunal; but all the Spanish governors were careful not to permit any church in Louisiana except the Roman Catholic.

**67. Great Fires in New Orleans.**—In 1788 a great misfortune overtook New Orleans; for a fire broke out and swept away the greater part of the city. More than four hundred houses were burned, among them the prison, the town hall, the church, and some of the finest residences. About 700 people were without shelter or food, but the governor came promptly to their aid, giving tents and supplies to all the needy. St. Domingo, being informed of the disaster, sent over bountiful supplies, and even gave help in rebuilding the little city. “We would have aided any other colony, overcome by so great a misfortune,” ran the generous message, “but we feel a double satisfaction in relieving the woes of our fellow

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\* Antonio de Sedella afterwards returned to Louisiana, where, known as Père Antoine, he lived to a good old age, a respected and beloved priest.

countrymen." New Orleans owed its new church to the generosity of a noble Spaniard, Don Almonester y Roxas, who, at his own expense, built the St. Louis Cathedral, which, after many alterations, still faces Jackson Square.

Seven years later there was another disastrous fire, but fortunately the new cathedral escaped. When the houses were rebuilt, it was strongly urged by the Cabildo that, instead of shingles, the new roofs should be made of tiles. The advice was followed, and at the present day many picturesque old houses covered with red tiles are to be seen in the French quarter of the city.

**68. Schools.**—For three-quarters of a century the girls of New Orleans had been educated by the Ursuline nuns, but there were few schools for boys. One that had been taught by a Spanish priest and two ushers was poorly patronized; for most of the inhabitants wanted their children taught in the French language, and as this was not possible in New Orleans, they sent their children to Canada or to France. When, however, in 1791, there was a successful insurrection of the slaves in St. Domingo against their former masters, many of the latter emigrated to Louisiana. There, as a means of livelihood, some of them opened new schools, and accomplished something for the cause of education. From the same island came at this period the first dramatic company ever seen in New Orleans.

**69. Carondelet, Governor, 1792-1797.**—Miro retired in 1791, and the following year was succeeded by the Baron de Carondelet.

**70. Improvements in New Orleans.**—Carondelet was long remembered for the improvements he made in New Orleans. Seeing that it would be of great advantage to the city, if it had water communication with the lakes, he called upon the merchants to furnish him with as many slaves as they could spare. With the aid of these and some convicts, he caused to be dug the canal that connects New Orleans with Bayou St. John and through this with Lake Pontchartrain. This canal not only served to develop the shipping, but it drained to some extent the marshes in the rear of New Orleans, and thus improved the health of the city.

Nor was this all. The population of New Orleans was now nearly 6,000, and as the streets were not lighted at night, robberies and other crimes were of constant occurrence. The governor, recognizing that one of the best preventives of such acts is plenty of light, had eighty lamps placed in various parts of the city, and as a further protection, he appointed a number of watchmen. To pay the expense of these additions to the comfort of the people, a tax of one dollar and twelve cents was laid on every chimney in the city—a form of taxation that is now regarded as very unwise. In 1796 it was dropped in New Orleans because it did not bring in sufficient income, and the necessary amount was raised by a tax on wheat, bread, and meat.\*

**71. Granulation of Sugar, 1796.**—We have seen that the quality of the sugar produced in Louisiana was very inferior. Consequently, since 1766,

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\* Cf. Martin's *History of Louisiana*, vol. II., p. 137.

sugar planting had been practically abandoned for other forms of industry. In the year 1795 Etienne de Boré, a Louisiana planter, resolved to make one more attempt to produce good, granulated sugar. His plantation lay in the present limits of New Orleans, where Audubon Park now is. In the planting of indigo he had been unsuccessful ; for the climate seemed unfavorable, and an insect, which devoured the leaves of the plant, had made its appearance in the indigo fields. Obtaining some canes, De Boré planted an extensive tract of land, though his wife and friends, remembering the experience of the past, pleaded with him not to involve himself in certain ruin. The services of a skilled sugar-maker, who had come over as a refugee from San Domingo, were engaged, and when the grinding season of 1796 arrived, a number of planters gathered around with intense interest to watch the result of the experiments. The trial was made. Suddenly a shout went up: "It granulates! it granulates!" De Boré's fortune was assured, and a new era of prosperity was opened for Louisiana.

## CHAPTER X

### THE CLOSE OF SPANISH RULE

**72. Revolutionary Ideas in Louisiana.**—The year 1795 was a year of commotion in Louisiana. Scarcely had the governor succeeded in crushing a conspiracy of the slaves who had risen against their masters, when he was confronted by another more serious danger. Ever since the famous revolution of 1789 in France and the establishment of a republic, there had been meetings of the Creoles in Louisiana, and many bold threats uttered about throwing off the Spanish yoke. Their brethren in France were free; why then should the government of a monarch be tolerated in Louisiana? In the cafés the revolutionary song, “Ça ira, ça ira, les aristocrates à la lanterne”\* was sung, and Genet, the French minister at Washington, actually tried to raise an army to invade Louisiana and expel the Spaniards. As every one was plotting, Carondelet, also, began to plot. First to guard against invasion and at the same time to overawe the Republican Creoles, he surrounded New Orleans with a wall of earth, strengthened by five forts. He then adopted a scheme which had been entertained by his predecessor Miro. He tried to persuade the western States, Kentucky and Tennessee, to separate themselves from the American union and put themselves under the protection of Spain. If this

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\* “The aristocrats will surely be hanged.”

plan succeeded, he would be able to establish a strong barrier against the advance of the United States ; for he saw that the new Republic was steadily growing, and that if nothing were done it might eventually absorb the territory of Louisiana.

**73. The Treaty of Madrid, 1795.**—During the course of the year, however, a treaty made between Spain and the United States, upset all Carondelet's plans. The king of Spain, being at war with England, thought it a wise diplomatic measure to insure the neutrality of the United States by granting this power the privilege of navigating the Mississippi and of depositing goods at New Orleans for three years. At the end of this time, the term was to be extended or another place of deposit designated. This treaty was so satisfactory to the western States that Carondelet found it useless to try to tempt them from their allegiance to their government.\*

**74. Gayoso de Lemos, Governor, 1797-1799.**—However, under the next governor, Gayoso de Lemos, the intendant of customs, Morales, forbade the Americans of the western States to use New Orleans any longer as a place of deposit for their goods. This act created great indignation, but, fortunately, a new governor, Casa Calvo, was appointed in 1799, and as his intendant renewed the privilege, all went well for a while.

**75. Plans of Bonaparte.**—The last year of the eighteenth century was to chronicle an important event in the history of Louisiana. The man that now pre-

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\* The treaty of 1795, known also as San Lorenzo, settled an old boundary dispute between Spain and the United States in the interests of the latter.

sided over the destinies of France was Napoleon Bonaparte. To his fertile brain the idea suggested itself of inducing the King of Spain to give up that territory of Louisiana over which the lilies of France had once waved so proudly. It was soon discovered that the Spanish court was not unwilling to strike a bargain. Louisiana, as governed by the laws and the commercial regulations of Spain, had been no more successful as a colony than formerly under the French domination.\* Nor was it certain that the growing power of the United States might not encroach upon Louisiana and even threaten the Spanish possessions in Mexico. Hence his Catholic Majesty was inclined to consider any proposition that promised to place the strong arm of Napoleon as a barrier to protect Mexico.

**76. Louisiana Ceded to France.**—When negotiations were opened, it was quickly agreed that if Napoleon would give up to the Duke of Parma, a scion of the royal house of Spain, that portion of Italy which was called the Duchy of Tuscany,† he should receive in return the whole territory of Louisiana. Accordingly on the 1st of October, 1800, an agreement was signed at St. Ildephonso, of which the main article declared: “His Catholic Majesty promises and engages to retrocede to the French Republic six months after the full and entire execution of the con-

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\* Judge Martin, in his *History of Louisiana*, gives a striking contrast between the expenses of Louisiana and those of North Carolina for the year 1785. In Louisiana every colonist cost the home government \$16 $\frac{55}{100}$  a year. In North Carolina, it was only 15 cents *per capita*, which amount was paid by the people themselves.

† This duchy was to be erected into a kingdom and recognized by the powers of Europe.



ditions and stipulations herein relative to the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other states."

**77. Napoleon's Ideas.**—Napoleon had purchased Louisiana as part of his great scheme of waging war with England. He believed that with this territory in his power, he could more easily attack the British possessions in Canada. But no sooner was the purchase concluded than he foresaw many difficulties. Chief among these was his conviction that if the English government learned of this new acquisition, a powerful fleet might be sent across the Atlantic to seize the province. At the moment Napoleon felt himself unable to meet such an attack. For the present, therefore, he determined to keep his bargain with Spain a profound secret. In this he was skillfully seconded by his Minister Talleyrand, who had cultivated the diplomatic art of keeping his own counsel.

**78. The Threat of Kentucky.**—Let us return to Louisiana. In 1801 Casa Calvo had ended his short administration without accomplishing anything of note. To succeed him and govern until France should take possession, Spain sent over General Salcedo, who was the last Spanish governor of Louisiana (1801-3). In 1802, Morales, who had once more become intendant, issued a proclamation, denying the Americans the right of depositing their goods in New Orleans; he believed that to exclude the Americans

would render more profitable the king's trade with Louisiana.\* This high-handed conduct brought the excitement in Kentucky to a fever heat. The people complained to the United States government of the injustice of Spain and asked for protection. "The Mississippi River," so ran their remonstrance, "is ours by the law of nature. Our innumerable rivers swell its volume and flow with it to the sea. Its mouth is the only issue that nature has given to our rivers; we demand that our ships shall sail down to the sea. We allow the Spaniards and the French to sail up to our villages and towns; why should they deny us a similar privilege? If the privilege is denied us, we shall seize New Orleans and hold it. If the Congress of the United States will not guarantee us protection, we shall take such steps as our safety demands, even if we have to separate ourselves from the Union. No protection, no allegiance!" This was bold language for a State to use; but the bonds of the Union were not so closely knit in those days as they have come to be in our own time.

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\*To deny the right of deposit was practically to exclude the Kentuckians from the trade of the Mississippi.

## CHAPTER XI

### THE BEGINNING OF THE AMERICAN PERIOD

**79. The Purchase of Louisiana.**—When the remonstrance of Kentucky was issued, Thomas Jefferson, who was then President of the United States, believed that the wisest course to pursue was not war, but negotiation. He calmed the troubled spirits of the Kentuckians as well as he could, and when he learned that Louisiana had been transferred to France, he obtained the consent of the senate to send to Paris James Monroe, of Virginia, a distinguished diplomatist, who was to join Robt. R. Livingston, the resident minister of the United States at the French court. Monroe and Livingston were instructed to open negotiations for the purchase of New Orleans. It soon became clear, however, that if a sufficient sum were offered, it would be possible to obtain not only New Orleans, but the whole of Louisiana. Napoleon, believing that in his approaching war with England, he might not be able to hold Louisiana, had decided to make a virtue of necessity. He would conciliate the American people by the transfer of his newly acquired province; at the same time the purchase money would help to replenish his exhausted treasury. The agreement was signed at Paris April 30, 1803. The price to be paid by the United States was \$15,-

000,000.\* Thus the American government had acquired a vast fertile territory, embracing the whole western portion of the Mississippi valley, or nearly one million square miles, for about two and a half cents an acre. The area of the United States had been nearly doubled.

**80. The United States in Possession.**—On the 30th of November, 1803, the Spanish governor, Salcedo, with Casa Calvo as commissioner, made a formal transfer of Louisiana to M. Laussat, the colonial prefect appointed by Napoleon to receive the province. As the news of Jefferson's purchase had already reached New Orleans, this ceremony excited no enthusiasm. Twenty days later, Wm. C. C. Claiborne and General Wilkinson met Laussat in the Cabildo to complete the transfer of the province to the American government. In the old Place d'Armes (now Jackson Square) the tricolor of France descended, meeting the star-spangled banner at half-mast. Then the American flag rose to the top of the staff amid the strains of "Hail Columbia." Thus, without being in any way consulted, the inhabitants of Louisiana saw themselves transferred from one power to another—the third time within the memory of a generation still living. The province seemed but a pawn on the chessboard of European diplomacy. The splendid future that it was to enjoy under the new *régime* appealed to but few of those that witnessed the ceremony. The huzzas, says Martin, which greeted the

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\* Of this sum \$3,750,000 was to be paid to certain creditors of France in the United States.

elevation of the American flag, came not from the Creoles, but from a small group of Americans.

**81. The Boundary Question.**—Until 1819 the boundaries of Louisiana were a subject of dispute between Spain and the United States. Nominally, the purchased territory extended from Canada to the Gulf of Mexico, and from the Mississippi to the Rocky Mountains, including to the east of the river the island upon which New Orleans stood.\* In addition, however, the United States government claimed, as a part of the purchase, a portion of Oregon, that section of Florida lying west of the Perdido River, and the great province of Texas. Against these latter claims Spain entered a strong protest, and the dispute was not settled till a number of years later. Within our limits it is impossible to discuss the merits of this controversy. The truth seems to be that on account of the haste with which the purchase was concluded, the limits of Louisiana were left undetermined.†

**82. Division of the Territory.**—In 1804 a division of the purchased territory was made by Congress. That portion lying north of latitude 33° (the present northern boundary of Louisiana) was to constitute the District of Louisiana (afterwards called the Missouri Territory). The portion lying south of the Mississippi territory and of an east and west line,

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\* As Bayou Manchac has been closed, New Orleans can hardly be said to *stand on an island* at the present day.

† England, also, claimed a portion of the Oregon territory until 1846. See "The Middle Period," by J. W. Burgess. For an excellent account of the southern boundary question, see article by Dr. B. A. Hinsdale, in *Proceedings of American Hist. Association* (1893).

commencing at the river and extending to the western boundary of the cession, was to constitute the Territory of Orleans. In 1812 this latter portion, as we shall relate, became the State of Louisiana; hence from now on we shall occupy ourselves exclusively with its history.

**83. Form of Government Established.**—For some years after the purchase of Louisiana the Creoles were far from contented with their new form of government. They thought the Territory of Orleans ought to be admitted into the union as a State. But a majority in Congress declared that a people who had long been accustomed to the despotic rule of Spain must serve an apprenticeship before they could be regarded as ready to adopt the free institutions of the United States. For one year, therefore, the inhabitants were allowed no share in the government; all power rested with a governor and a legislative council of thirteen, both appointed by the President of the United States. In 1805, however, a new form of government, similar to that in the other territories, was granted. While the governor was still appointed by the President, the people were to elect every two years a legislative assembly of twenty-five members, and this assembly was to send on to the President the names of ten candidates, from whom he should choose an upper chamber of five members. This concession, however, did not allay the general dissatisfaction; for the governor possessed a veto power which could not be overridden by a two-thirds majority of the legislature, and which enabled him to defeat any law of which he did not approve.

**84. Claiborne, Governor of the Territory.**—Wm. C. C. Claiborne, who had been appointed governor by Jefferson, was descended from an old Virginia family, and before he was sent to Louisiana, had been governor of the Territory of Mississippi. Though his disposition was kind and conciliatory, and though he possessed considerable ability as an executive officer, it was some years before he could overcome the prejudices and win the love of the people. The Creoles complained that he did not speak the French language and was ignorant of the character of the population he had come to govern; while the new American settlers joined with the Creoles in maintaining that he had too much power. The newspapers of that day, the files of which still exist in the city hall of New Orleans, are filled with bitter and often malicious attacks on the chief executive; but with a consciousness of rectitude, Claiborne declared that though the freedom of the press was subject to such abuses, the welfare of the country required that it should not be checked.



GOVERNOR CLAIBORNE.

**85. Statistics for 1803.\***—In 1803 the population of New Orleans was a little over 8,000, while in the rest of the Territory of Orleans, exclusive, of course, of the west Florida country, there were about

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\* From Martin's *History of Louisiana*.

32,000 inhabitants. For the year 1802, the products of the colony had been: 3,000 lbs. of indigo, (the cultivation of which was declining); 20,000 bales of cotton, 300 lbs. each; 5,000 hhds. of sugar, 1,000 lbs. each; 5,000 casks of molasses, 50 gals. each. The rum or tafia, produced in the distilleries around New Orleans, filled 5,000 casks of 50 gals. each; while the loaf sugar from the one refinery amounted to 200,000 pounds. The produce shipped from New Orleans, consisted of flour, 50,000 lbs.; tobacco, 2,000 hhds.; cotton, 34,000 bales, etc. The ordinary manufactures at this period were insignificant. In New Orleans they consisted chiefly of cordage, hair powder, vermicelli, and shot. In the country parishes, the Acadians wrought cotton into quilts and clothes, just as they do at the present day.



## CHAPTER XII

### IMMIGRATION : DISTRIBUTION OF THE POPULATION

**86. New Orleans Incorporated, 1805.**—When the French took possession in 1803, the old Cabildo or Spanish council was abolished and Laussat appointed a city government for New Orleans. In 1805, the city was regularly incorporated, and while the first mayor, James Pitot, was chosen by the governor, the inhabitants were empowered to elect a city council. As the territorial assembly was not elected until somewhat later, this was the first occasion on which the right of suffrage was ever exercised in Louisiana.

**87. New Elements.**—New Orleans was in a formative state. American merchants, attracted by the opportunities for gain, were beginning to crowd into the city, which already boasted nearly 10,000 inhabitants. From Cuba, also, there was considerable immigration, some thousands of planters having come over and brought with them their slaves. Germany soon began to contribute her bands of colonists. Many of these came as poor *redemptioners*; that is, on their arrival, the captains of the vessels that had brought them sold them for a certain term of years to the planters or to the inhabitants of the city as indentured servants. Thus by their service they were enabled to pay the price of their passage across the ocean. As the redemptioners were often skilled arti-

sans, their coming was heartily welcomed. Moreover, the arrival of this better class of labor kept down the price of negro slaves.\* The new elements, however, did not always harmonize with the old population in the growing city. The Creoles conceived a cordial dislike for the active energetic Americans, who threatened to crowd them to the wall in commercial affairs. Gayarré, himself a Creole, ventures the statement that the annual overflows of the Mississippi and the frequent epidemics of yellow fever were not unwelcome to the old Louisianians because these misfortunes discouraged the settlement of the Americans.†

**88. The Counties or Parishes.**—After the cession, the first divisions of the Territory of Orleans, as in the other Territories of the United States, were called counties. Of these there were twelve: German Coast, Acadia, Lafourche, Iberville, Pointe Coupée, Concordia, Attakapas, Opelousas, Rapides, Natchitoches, Ouachita, and Orleans. As these counties were very large and the boundaries were undefined, a further division became necessary, and in 1807 the legislature divided the territory into nineteen districts. These districts, following the lines laid down by the

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\* Subsequently some of these redemptioners became worthy and honorable citizens. Among them may be cited Christian Roselius, who, having won fame at the New Orleans bar, at one time occupied a chair in the University of Louisiana. See "History of Redemptioners," by J. Hanno Deiler.

† Such was the conservatism of the old inhabitants that Augustin Macarty, a Creole, while he was Mayor of New Orleans, gave orders that the first cargo of ice brought to the city should be thrown into the Mississippi, for fear cold drinks in summer would affect throats and lungs, and produce consumption.

church in its ecclesiastical divisions, were called parishes, and were named in many instances after catholic saints. The name of county was gradually dropped, and at the present day Louisiana is the only State of the union which employs the word parish for its political divisions.

**89. The Parishes, 1803-1810.**—Outside of New Orleans there were no towns of any importance. At Galvezton, founded on the Amite in honor of Governor Galvez, there were still some houses, but no prosperity. Under the same governor St. Bernard parish had received a large number of settlers from the Canary Islands—the so-called *Isleños* or Islanders. Provided by the government with whatever was necessary to begin farm life, they found hunting, fishing, and cattle raising more profitable than the cultivation of the soil.\* At New Iberia there was also a settlement of *Isleños*, but it was scattered over several plantations. Even Natchitoches, the oldest town in the State, did not at this time rise to the dignity of a hamlet. In West Florida, however, Baton Rouge was increasing rapidly in population, and the cotton plantations in its vicinity were very successful. But, though the towns of the territory were inconsiderable, there were many prosperous districts in the country parishes. The most enterprising of these was that of the Germans (descendants of Law's settlers) sixty

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\* Here the *Islanders* live to the present day, many of them in simple palmetto huts. They speak a corrupt Spanish. They are a kindly people, but, for the most part, very ignorant and primitive. Some of them, however, have been educated and have risen to high official position in the State. Cf. Fortier's "Louisiana Studies."

miles above the city. Doing their own work and owning but few slaves, these Germans had made their settlement on the river so successful that it became known as the Golden Coast (*côte d'or*). They raised some sugar, many cattle, and brought fresh farm products of all kinds to New Orleans.

**90. Acadians.**—Above the Germans on the river were the Acadians, who were less prosperous and lived poorly. However, they were happy and well contented with their humble lot. They wove their excellent Acadian cloth, which they dyed with indigo. Their crops were small; but they sent quantities of chickens and hogs to the city market.\*

**91. Prairie Country.**—To the west of the Achafalaya were the Attakapas and Opelousas districts, a beautiful prairie country, where the population was increasing and where each year brought rich harvests. To these parishes many settlers had come from the United States, and with their industry and thrift had set a good example to the less active Creoles, who, as a traveler of that time tells us, delighted too much in smoking, boating, and hunting, and disliked regular occupation. Many cattle were raised. The cultivation of sugar was already beginning, but the chief crop was cotton.

**92. Red River.**—The first settlement on the Red River was in Avoyelles, sixty miles from the river.

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\* While the majority of the Acadians have remained unlettered, many of them have sought the advantages of education and have risen to high dignity in the government of the State. They preserve their language (a corrupt French) and their primitive customs with wonderful tenacity.

The population was partly Creole and partly American. Corn and cotton were the staple products, though much attention was paid to the raising of cattle and swine. Above Avoyelles on the river there were other scattered settlements, but they were chiefly trading posts. Here the inhabitants kept up an active commerce with the Indians, who brought peltry to exchange for the products of civilization. In these settlements the population seems to have been composed largely of American immigrants from across the Mississippi.

**93. The Indians.**—The Indians in the territory were chiefly scattered tribes. Bands of Attakapas, Opelousas, Tunicas, Tensas, etc., were still to be found. But the most formidable of all were the Choctaws, nearly 5,500 of whom were distributed over the country from Mobile to the Sabine. These Indians had learned from the whites to use "firewater," and when drunk they were often extremely dangerous. Especially in the parishes that were remote from the capital, their depredations had proved a serious menace to the peace of the settlers and had even caused the desertion of several farms. For the most part, however, the Indians were no longer a source of danger to the inhabitants. They lived by hunting and the fur trade, or hired themselves to the colonists as boatmen on the Mississippi.\*

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\* The Indians are not yet extinct in Louisiana, though the number surviving is only about seven hundred.

## CHAPTER XIII

### STIRRING EVENTS. STATEHOOD

**94. The Burr Plot.**—In 1807 there was great excitement in New Orleans over the so-called Burr plot. Aaron Burr had been vice-president of the United States; but having killed in a duel the distinguished statesman, Alexander Hamilton, he found himself very unpopular in the east. Proceeding to Kentucky, he surrounded himself with a number of adherents, whom he charmed with his fascinating manners, and, it is said, with bold schemes for a separation of the western country from the United States government. His enemies declared that he also intended to invade Mexico, conquer that country, and make New Orleans the capital of his possessions. Burr himself affirmed that he intended nothing more than the settlement of a large tract of land that he had purchased on the Ouachita, in Louisiana. However, measures were immediately taken by the United States government to circumvent any of his schemes that might prove treasonable. General James Wilkinson placed New Orleans under martial law, arrested all whom he suspected of being Burr's agents, and refused to surrender them on writs of *habeas corpus*. Such conduct aroused great opposition; for it was believed that there was no occasion for these arbitrary proceedings. Finally, however, news came that the President of the United States had issued a proclamation against Burr.

Soon after he was arrested in Mississippi and sent on to Richmond for trial. Thus all his schemes, the nature of which has never been clearly known, came to nought, and the excitement in New Orleans gradually died away.\*

**95. The Baton Rouge Revolt, 1810.**—The claim of the American government to West Florida had never been recognized by Spain, and up to the year 1810, the territory had remained in the hands of the latter power. In the Baton Rouge district of Florida, however, the settlers were for the most part Americans. Discontented under the Spanish rule, these settlers, together with some of the old inhabitants, determined upon the capture of the Spanish fort at Baton Rouge, which at this time (1810) was feebly garrisoned. The officer in command was Colonel de Grandpré, acting under the orders of Governor de Lassus. The Americans, under Philemon Thomas, being far more numerous, had an easy victory. The gallant De Grandpré, who might have surrendered with honor, was shot down at the head of his garrison, while De Lassus was taken prisoner. The victors established an independent government under the title of the Commonwealth of West Florida, and at the same time expressed a desire to be admitted into the American Union. The proclamation of the President, far from recognizing the bold suggestion of a new Commonwealth, promptly ordered Governor Claiborne to take possession of West Florida in the name of the United States government. Two years

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\* As no treasonable action could be proved against Burr he was set at liberty, and he died in poverty and obscurity.

later, when the Territory of Orleans was admitted as a State, that portion of West Florida lying between the Mississippi and Pearl River was declared by Congress to be a part of Louisiana. This decision settled the eastern boundary of the State.

**96. Slave Insurrection, 1811.**—The year 1811 was marked by one of those terrible insurrections which seem to have been a necessary result of the institution of slavery. The blacks, plotting among themselves, determined to march down, 500 strong, from St. John the Baptist Parish, gather recruits on the way, and try to capture New Orleans. To the chant of barbaric songs and to the beating of drums, they proceeded down the banks of the Mississippi, scattering the terrified planters before them. When they approached New Orleans, however, they were confronted by the disciplined troops of the United States under General Wade Hampton, and were quickly dispersed. The execution of the ringleaders checked such uprisings for many years afterwards.

**97. The State of Louisiana, 1812.**—As the number of inhabitants in the Territory of Orleans had now risen to 75,000, there was no longer any valid excuse for denying it the privilege of drawing up a constitution and entering the Union as a State. It is difficult for us at the present day, however, to understand the bitter feeling aroused in the Congress of the United States by the proposal to grant this Territory the rights of Statehood. The discussion waxed hot. The opponents of the bill declared that to admit a Territory peopled largely by French and Spanish Creoles, would be injurious to the interests of the Eastern States.



No sympathy could exist between the representatives of the proposed State and those of the older commonwealths. During the debate a distinguished representative from Massachusetts, Josiah Quincy, used these memorable words: "If this bill passes, the bonds of the Union are virtually dissolved; the States that compose it are free from their moral obligations, and as it will be the right of all, so it will be the duty of some, definitely to prepare for a separation, amicably if they can, violently if they must." In spite, however, of this threatening language, the bill was passed by Congress, authorizing the calling of a convention in New Orleans to frame a Constitution. When this Constitution had been approved by Congress an act was passed (April 8, 1812), admitting the Territory of Orleans into the Union under the title of the State of Louisiana.

**98. Claiborne Elected Governor.**—The governor chosen by the people of the new State was Wm. C. C. Claiborne (1812-16), the former governor of the Territory—a choice which must have been for that official a gratifying testimonial of the esteem in which he was now held by the people whom he had already governed for eight years.

**99. The First Steamboat (1812).**—The first month of the year 1812 witnessed an important event. Up to this time it had been necessary for a vessel to consume ten or fifteen days in ascending the river from its mouth to New Orleans, a distance of 107 miles. But now a new order of things was to supplant the old; for a steamboat, the first ever seen in southern waters, descended the Mississippi from Pittsburg to New

Orleans. As this steamboat was the pioneer of others, traffic on the river received a great impetus. Quick transportation made agriculture a more profitable employment than ever before. The shipment of grain from the western States through the port of New Orleans, though far from reaching the proportions of the present day, was soon an important item in the commerce of the State. Moreover the establishment of rapid communication on the river helped to bring the people of the State into closer relations with one another, and to produce a unity of feeling and thought.

## CHAPTER XIV

### THE WAR OF 1812-15

**100. Preparations.**—The clouds of war, however, were already threatening to darken the bright prospects of the young State. The high-handed conduct of England in interfering with our commerce, and above all in seizing American sailors under the plea that they were English born, had forced our government to declare war. The details of the conflict in other parts of the Union cannot be given here. It was not till the third year of the war that Louisiana herself was threatened. The object of the British then was to seize New Orleans as the key of the Mississippi valley, and afterwards to proceed to invade the valley itself. As soon as this intention became clear, General Andrew Jackson was dispatched to the south to meet the invaders with such troops as he could procure. After driving the English out of Pensacola, Jackson moved his headquarters to New Orleans (December 1, 1814).

**101. The Baratarians.**—The invasion of Louisiana had been kept by the English a profound secret, but the whole scheme had been betrayed to Claiborne by their efforts to win over to their side the famous smugglers of Barataria. It will be necessary briefly to explain the circumstances. On the southern coast of Louisiana there is a large bay known as Barataria. It is protected from the storms of the gulf by a small

island called Grande Terre. On the inner side of this island a number of smugglers or privateers had erected a fort called the Temple, whither they brought the proceeds of their depredations on Spanish commerce. At the head of these men was Jean Lafitte, a former blacksmith of New Orleans, who had given up the occupation of shoeing horses for the more hazardous, but more profitable profession of capturing Spanish vessels and selling their rich cargoes through his agents in New Orleans. Claiborne viewed these violations of the custom house laws with no favorable eye, but he found it hard to convince the inhabitants of New Orleans that smuggling was a crime. The severe custom duties of the Spanish *régime* had led many even of the better class of citizens to evade the laws whenever the profits were large and detection uncertain. Nevertheless Claiborne proclaimed Jean Lafitte and his associates to be dangerous outlaws. Finally, Pierre Lafitte, a brother of the smuggling chief, having been arrested, was thrown into the calaboose in New Orleans.

**102. The Baratarian Settlement Destroyed.**—At this very time, the British, wishing to obtain the co-operation of the Baratarians, sent a deputation to wait on Jean Lafitte, promising him the grade of captain in their army and the sum of \$30,000, if he would desert the government that had branded him as an outlaw and aid in the invasion of Louisiana. Lafitte's patriotism, however, was proof against such inducements. He immediately wrote to a member of the Louisiana legislature, disclosing all the plans of the British and asking to be allowed to fight in defence of

his State. A committee of officers having been called together by Claiborne to consider this proposition, decided with hardly a dissenting voice to have no dealings with the smugglers, and even to reward the generous offer of Lafitte by sending an expedition to exterminate him and his pirate crew. This was done. A large force under Commodore Patterson and Colonel Ross, of the United States navy, proceeded to Barataria Bay, where, though Lafitte escaped, the settlement was broken up and a rich booty fell into the hands of the raiders.

**103. Lafitte Visits Jackson.**—When General Jackson reached New Orleans, Lafitte, still unshaken in his allegiance to his own government, visited him and again proffered his services and those of his lieutenants for the defence of New Orleans. Jackson had heartily approved of Claiborne's expedition, and in his usual vehement manner, had denounced the smugglers as "hellish banditti." Nevertheless, when he saw Lafitte, and heard his offer of assistance, he seems to have changed front. He promptly placed Lafitte, Dominique You, and other Baratarians in charge of important defences, and some of them commanded batteries on the field of Chalmette. Here they won not only high praise from Jackson for their martial skill and bravery, but also a full pardon for the past from the United States government.

**104. Defences.**—It hardly surprises us that Jackson should have accepted the assistance of these buccaneers when we learn the defenceless condition of Louisiana at the time of the invasion. With its numerous water courses the State was exposed to

attack on several sides, while the United States government seems to have neglected to strengthen Jackson's hands by placing at his disposal sufficient munitions of war. Jackson, however, was not discouraged. His presence in New Orleans inspired Creoles and Americans alike with the greatest energy and enthusiasm. Preparations for the coming conflict went on by day and night. Latour, an engineer on Jackson's staff, testifies that the people of the State were as cheerful as if preparing for a holiday excursion. After reviewing the State militia, Jackson visited the various ports on the river and the lakes, strengthening the defences by the erection of batteries and closing the bayous leading into the interior. Only one of these bayous seems to have been neglected. This was Bayou Bienvenu, through which it was possible to send boats from Lake Borgne to the plantations lying below the city. The failure to close this bayou, which was doubtless a pure accident, led directly to the Battle of New Orleans.

**105. The Landing of the British.**—The first hostile act of the British was to overcome a small American fleet which, under Lieut. Ap Catesby Jones, was guarding Lake Borgne. Then, having discovered the unprotected bayou, they landed a number of boats, and rowing along through the high reeds which concealed so well their designs, they finally reached firm land near the plantation house of General Villeré. Surrounding this, they captured all the inmates. Major Villeré, the general's son, however, jumped through a window, and though fired upon by the British guard, made good his escape to New Orleans.

**106. The Attack of December 23d.**—When Jackson learned of the approach of the enemy, he ordered out all his troops, and swore “by the eternal” that the British should not sleep that night on Louisiana soil. He made good his oath. In the meantime the British had encamped some miles below the field of Chalmette. Here, as soon as it was evening, fires were lighted, and the neighboring houses were robbed of fowls, hams, and wines to furnish forth their supper. Suddenly a large vessel was seen creeping down the Mississippi. It was growing dark and in the twilight the British at first thought one of their own cruisers was approaching, but disappointment quickly followed when the vessel opened fire on their camp with grape and canister, and a rough voice on board cried: “Now, my lads, load again, and give those ’tarnal Britishers another round of grape.” Then followed a scene of wild confusion. The camp fires were hastily extinguished, and as the deadly grape-shot began to fall, shrieks and groans arose on every side, while those that were able rushed to the levee for protection. Hardly had they reached this shelter when the sharp firing of pickets announced that the Americans under Jackson had attacked the camp on the land side. In terrible straits, but not disheartened, the British hastily formed their ranks and rushed forward to the conflict. The vessel on the river was now compelled to remain silent.

**107. The First Battle.**—The Americans, inspired by Jackson’s presence, threw themselves upon the enemy in a hand-to-hand conflict. For two hours or more, by the light of the moon partially obscured, the

fighting continued. The armies were split up into small attacking parties, which often found it impossible to distinguish friend from foe. Finally Jackson, who had only 2,131 men on the field, learned that the British were bringing up reinforcements from the bayou. He determined, therefore, to withdraw his forces. He had lost in prisoners, wounded, and killed, 213 men, while the enemy, who before the contest was over had about 2,200 men on the field, had lost 400. When the English returned to their camp, they were afraid to relight their fires, for the American vessel still held her threatening position on the river and the fires would enable her to direct her guns. Shivering in the cold, they passed a night of vigil.

**108. Result of the First Conflict.**—Instead of an easy conquest of New Orleans, which they had been led to expect, instead of the Creoles deserting to them as they had presumptuously hoped, they had met with a decided repulse. No advance could now be made until more troops and some heavy artillery were brought up from the fleet; for the American vessel must be dislodged from her position by a battery on the river bank. If the British, after their landing, had marched rapidly on New Orleans, the city would most probably have fallen into their hands. Now Jackson had leisure to prepare for them. Fortifying an old canal on the field of Chalmette, he stretched his breastworks from the river to a cypress swamp on the left. This swamp the British afterwards attempted to penetrate, but declared it was impassable. Hence Jackson's position was the best that could have been selected.



**109. Pakenham in Command.**—On the 25th (Christmas day) General Pakenham, brother-in-law of the Duke of Wellington, arrived as commander-in-chief of the British army. Planting a battery on the levee, he succeeded in setting the American vessel on fire with hot shot and thus forced her crew to desert her. During the next few days he engaged in two artillery battles with the Americans; but the victory rested with the latter, who proved themselves such excellent gunners as to extort praise even from their enemies.\*

**110. Renewed Preparations.**—Both sides now received reinforcements. Jackson's army had been formed from a strange mingling of Louisiana Creoles, of Frenchmen living in Louisiana, of Mississippi and Tennessee militia, of free-men-of-color, and of United States marines. He was now strengthened by troops from the Acadian coast, from Baton Rouge, and from Kentucky, until he had 3,600 men behind his breast-works and 800 Mississippi cavalry and Attakapas dragoons to serve as a rearguard. Across the river, nearly opposite to his line, Jackson had placed General Morgan, with some Louisiana and Kentucky troops, to defend the right bank. On the British side, General Lambert had arrived with additional troops, swelling the British army to 8,900 men—a force just double that of the American general.

**111. The Battle of January 8, 1815.**—Paken-

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\* During these battles, the English used barrels of sugar to strengthen their batteries, while Jackson used cotton bales for the same purpose. Thus cotton was pitted against sugar, and the former won the day.

ham saw no other chance of victory than to attack simultaneously on the two sides of the river and to carry the breastworks by storm. The day chosen for this supreme effort was January 8th. Everything seemed ready by the night of the 7th, and on the following morning two rockets went up from the British camp as a signal for the conflict. These were clearly seen by the Americans, who made their preparations to give the red-coats a warm reception. The English commander had ordered Colonel Muggins of the 44th to furnish his men with fascines or bundles made of sugar cane and with ladders. Throwing these fascines into the canal in front of Jackson's breastworks, they were to scale the embankment with the ladders. But Muggins seems to have wilfully neglected these orders, for his men appeared upon the field without the necessary implements. When Pakenham learned this, he immediately ordered Muggins to fall back and get them, but it was too late. The mist that hung over the field had suddenly vanished; so that the advancing columns of the British were a target for the Tennessee riflemen and for the gunners at the batteries. Fire and shell belched out from every gun. "Stand to your guns," cried Jackson, who seemed to be everywhere; "don't waste your ammunition; see that every shot tells." His riflemen hardly showed their heads as they raised their firelocks above the breastworks and dealt out death to their assailants. The field on which the British were advancing was literally furrowed by the terrible fire of the cannon. No men, however brave, could overcome such odds. To make the position of

the English still more critical, the American battery on the other side of the Mississippi was now throwing a cross fire into the British columns. Pakenham himself was struck three times, the last time fatally, and beneath the branches of a neighboring oak he expired. The gallant command of General Keane, which numbered 900 men, was almost swept away, only 130 being left alive.\* At two o'clock in the afternoon two thousand British soldiers lay dead upon the field of Chalmette. Jackson had lost only eight killed and fourteen wounded. An armistice of two days was now agreed upon to bury the dead. Shallow pits were dug, in which the British soldiers were hurriedly laid to rest. The bodies of Pakenham and of several other officers were sunk in barrels of rum to be transported to England. On the other bank of the river, Colonel Thornton, though he arrived too late to seize the American battery and turn it against Jackson's line, was yet successful in putting General Morgan's troops to flight. When, however, he heard of Pakenham's defeat, he retired down the river and rejoined the defeated army.

**112. Retreat of the British.**—About a week later, when they learned that their fleet had been unable to pass the forts on the river, the English broke camp, and cautiously stole away to Lake Borgne. The trained troops of England, which had won victories in the Spanish campaign against the armies of Napoleon, and which under General Lambert were to join a few months later in winning the great battle of

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\* Compare the famous "Charge of the Six Hundred," at Balaclava, by Tennyson.

Waterloo, had been defeated by the undisciplined militia of the Southern States.

**113. The Victory Celebrated.**—In New Orleans the issue of the great battle had been awaited with much trepidation. It was whispered that the watchword of the British was “Booty and Beauty,” and that if New Orleans should fall into their hands, it would be ruthlessly sacked. Many declared that if the grim old Commander Jackson were forced to evacuate the city, he would destroy it rather than allow the enemy to take possession. Imagine then the joy of the inhabitants when a swift courier galloped through the streets, shouting: “Victory! victory! Pakenham is defeated! Hurrah for Jackson!” On the 21st of January Jackson issued a proclamation, praising the skill and bravery of the soldiers that had fought under him. All received their meed of praise—the Kentuckians, Mississippians, and Tennesseans, who had left their homes to defend Louisiana; the Creoles, who had never for a moment wavered in their loyalty to the United States government; the Baratarians, who had redeemed their reputations on the field of Chalmette, and the free-men-of-color, who had shown no less fortitude than the whites. A few days later the Place d’Armes was the scene of a splendid ceremonial, during which the General, crowned with laurel, marched at the head of a grand procession to the cathedral to listen to a *Te Deum* in honor of his victory.

**114. The End of the War.**—On the 13th of February, more than a month after the battle, Jackson was notified, by the admiral of the British navy,

that news had arrived of a peace signed between the United States and England at Ghent on the 24th of December.\* Had the ocean cable, which now connects all parts of the civilized world, been laid at this time, the battle of New Orleans would never have been fought. Yet the battle was not fought in vain. The heroism of the English on that fatal day and the brave conduct of Jackson's men created a mutual respect that has never ceased to influence the two peoples.

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\* As the official news of the peace was slow in reaching Jackson (it took twenty-two days for it to reach Washington), he kept New Orleans under martial law for more than two months after the battle, and even banished from the city a district-judge, who had displeased him. For this he was afterwards summoned before the same judge and fined \$1,000. This sum the general promptly paid; but, thirty years later, it was returned to him by the United States government. In 1828 and again in 1832 he was elected President of the United States.

## CHAPTER XV

### A PERIOD OF DEVELOPMENT

**115. New Objects of Interest.**—Though we mention with pride the splendid record of the State at the Battle of New Orleans, it is with no less pride that we turn to the development of Louisiana in the succeeding years. “Peace had her victories no less than war.” The subjects of our narrative will now be the growth of the population, the improvement in business facilities, the progress of agriculture, the political forces that were at work in the State, and the spread of popular education.

**116. The Close of Claiborne’s Term.**—When the term of Claiborne as governor expired, he was succeeded by General James Villeré, a distinguished Creole (1816-20). Before leaving office Claiborne bore witness to the prosperous condition of agriculture and commerce, recommending, however, that the plantations should be protected by better levees. He criticised unfavorably the criminal laws then existing, declaring that the penalties were not proportioned to the offences. The object of the laws, he added, was to prevent crimes rather than to punish them; that certainty and celerity in laws are always more desirable than severity—wise maxims that are too often neglected in our own day.

**117. Growth of Population.**—The growth of the population during this period was wonderful. The

opportunities for the rapid accumulation of fortunes attracted speculators and adventurers, not only from the rest of the Union, but even from foreign countries. From the *Louisiana Gazette* of the year 1825, we learn that planters from Virginia, North Carolina, Georgia, and Alabama, recognizing the superior advantages of the Louisiana lands, were crowding into the State with their slaves. Fine woodlands in the Opelousas, Attakapas, and Natchitoches districts could be bought at from two to five dollars an acre. Town after town in the country parishes was incorporated, and the port of New Orleans kept pace with the prosperity of the interior.\*

**118. Bancomania.**—The prosperity, however, was not unalloyed. Political economists hold that the rapid increase of wealth is likely to lead to reckless speculation, which in turn leads to financial panics. Louisiana was no exception to this general principle. The growing business of the State demanded a number of banks in New Orleans. In the annals of this period frequent mention is made of the incorporation of such institutions, each with a capital ranging from two to four millions. The State frequently made itself a partner in these enterprises by subscribing to a large amount of the stock. In order to compete with each other, these banks began to lend money on all kinds of so-called securities—especially land and slaves. In our day state banks are pre-

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\* In 1812 the population of the State was about 75,000, of whom one half were slaves; in 1820 it was 153,407; in 1830, 215,000; in 1840, 350,000; and in 1860, 708,000. New Orleans in 1830, 46,000; in 1840, 102,000.

vented from issuing paper money by a heavy Federal tax; but, at this time, such money, though it was not a legal tender, was issued freely and was presumably secured by specie in the vaults of the banks. The planters, borrowing freely from these banks, began to increase the expenses of living. Their extravagance in the decade of 1830-40 would have been ruinous unless the profits of agriculture had been enormous. Cotton and sugar both brought high prices, however, and there followed what are termed the "Flush Times" of Louisiana.\* Gambling on the Mississippi and in New Orleans was conducted on a grand scale. Lottery companies were incorporated by the legislature to aid educational and charitable institutions, and even to pay off the debts of a church in New Orleans.

**119. Panic.**—Speculation was in the air. Property around New Orleans rose in value until tracts of swamp land upon which no human being could live brought their owner a fortune. The crisis was not far off. Throughout the United States at this period, there was a general inflation of values; everybody was anxious to get rich by speculation. Just then, the government at Washington under Jackson, and a little later under Van Buren, thought it wise to require that all debts due the government should be paid in

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\* The number of sugar plantations in 1803 had been only 75; but in 1833 it had risen to 700, with an invested capital of fifty millions. In 1837, however, the price of cotton was eighteen cents a pound, and as a new tariff had lowered the price of sugar, one hundred and sixty-six plantations of sugar were turned into cotton fields. Thus in 1837 Louisiana produced 225,000 bales. This change from one staple to the other seems to have been continued according as the tariff affected prices.



gold and silver instead of paper money. This action precipitated the panic that was bound to come in any case. The paper money, when it lost popular confidence, was worthless unless it could be immediately redeemed in specie. This the banks were unable to do; for they had issued large quantities of paper money, and had often lent out from their vaults the specie held for redemption. In 1837, fourteen banks of New Orleans suspended in one day, only two continuing to redeem their notes. In 1839 they all suspended. A panic ensued, in which business was hampered, and many fortunes were wrecked. Luckily, however, the country was rich in resources, and after a few years of struggle the crisis was successfully passed. At the same time the State learned a severe lesson from its experience in subscribing to and guaranteeing the stock of "wild-cat" banks; for its liabilities in 1839 amounted to twenty-three millions of dollars.\*

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\* No detailed account can be given here of the worthy gentlemen who filled the gubernatorial chair between the years of 1820 and 1860. They all seem to have had the welfare of the State at heart, and to have devoted their best energies to its advancement. Their names with their dates are appended:—

*Thos. B. Robertson* 1820-24. He resigned before the end of his term, which was completed by H. S. Thibodaux, president of the senate.

*Henry Johnson* 1824-28.

*Peter Derbigny* 1828-29. Derbigny was killed by a fall from his carriage, and was succeeded by A. Beauvais (1829-30), until the meeting of the Legislature, and then by Jacques Dupré, 1830-31.

*A. B. Roman* 1831-35.

*E. D. White* 1835-39.

*A. B. Roman* (2nd term), 1839-43.

*Alex. Mouton* 1843-46.

**120. Signs of Progress.**—After the year 1830 much activity was shown in the building of railroads, the first completed being the Pontchartrain line, connecting New Orleans with Milneburg. This little road, upon which traffic still continues, is one of the oldest in the United States. New Orleans, moreover, extending beyond her old narrow boundaries, saw her levees crowded with hundreds of vessels come to bear away the products of the State. The streets of the city were no longer to be dimly illuminated by flickering lamps; for in 1834, gas was introduced. Theatres, also, in the American quarter were now built, and the city began to wear a more festive air at night than ever before. Better illumination doubtless had much influence in checking the increase of crime. Unfortunately, however, there was practically no quarantine system, and the city was subject to the ravages of yellow fever and even of cholera.

**121. Sugar Refining.**—We have seen that in 1796 Etienne de Boré was successful in the granulation of sugar, achieving for himself both fame and fortune. But until the administration of Governor Roman, 1831–35, Louisiana had failed to discover the proper method of refining sugar. Then, however, several prominent planters, among whom were Valcour Aime and Thomas Morgan, determined to remove this reproach from the State. With large means at their command, they purchased the best chemicals and the most improved machinery, and began their experiments. Their success was remarkable. From the

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*Isaac Johnson* 1846-50.

*Paul Hebert* 1853-56.

*General Joseph Walker* 1850-53.

*R. C. Wickliffe* 1856-60.

year 1834, Valcour Aime produced clarified, stamp, and loaf sugar directly from the vegetable juice ; and from the year 1840, when he first used bone-black filters, his sugar was perfect in purity, color and crystallization. On his own plantation Aime produced 340,000 pounds a year, which when refined brought him from twelve to fourteen cents a pound. With an income of \$100,000 a year, he lived on his great estate like a feudal baron, surrounded by every luxury that money could procure. His lavish entertainments showed a royal hospitality, while his benefactions to churches and colleges made his name famous throughout Louisiana. His success was typical of this period.\*

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\* Cf. Sketch of Valcour Aime, by Alcée Fortier, in *New Orleans Sugar Report*, 1896.

## CHAPTER XVI

### THE NEW CODE. POLITICAL AGITATION

**122.** The Civil Code.—As early as the year 1804 an attempt was made to improve the laws of Louisiana. Two lawyers, James Brown and Moreau-Lislet, were appointed to draw up a civil code. This code, which was modeled after the Roman law as laid down in the French code or code Napoleon, was revised and remodeled in 1827 by Moreau-Lislet, Pierre Derbigny, and Edward Livingston, three of the ablest jurists that have ever lived in Louisiana. It continued in use till the year 1870, when the present revised code was framed. Unfortunately, however, many of the old Spanish laws, being left unrepealed, continued in force, and as few lawyers were well acquainted with them, there was for a time much confusion in the courts of justice. The civil code, as it exists in Louisiana, is found in no other State of the Union. It has been declared by competent judges to be a model of simplicity; for it may be easily understood by those who are destitute of legal training. For the sake of uniformity some attempts were formerly made to bring the Louisiana law into accord with that of the other States; but the people preferred to cling to the old code.

**123.** The Common Law.—It is generally believed that what is called the common or unwritten law of England is not recognized in Louisiana, but, strictly

speaking, this is a mistake. It is true that no offence in Louisiana is held to be a crime because it is so regarded under the common law; it must have been declared a crime by statute, that is, by act of the General Assembly, before any one can be punished for committing it. Nevertheless the Legislature of 1805 passed an act, which declared that all the crimes, offences, and misdemeanors named therein, should be taken, intended, and construed according to and in conformity with the laws of England; and that the forms of indictment, the methods of trial, the rules of evidence, and all other proceedings in the prosecution of the said crimes and misdemeanors (except as otherwise provided for in the act) should be according to the said common law of England. This statute has never been repealed, and its binding force has several times been recognized by the Supreme Court of the State. In general, therefore, it may be said that the criminal courts of Louisiana at the present time appeal to the common law for definitions of such offences as were declared to be crimes and misdemeanors in the act of 1805, as well as for the mode of prosecution; that is, the form of indictment, the method of trial, the rules of evidence, etc. Thus far the common law is recognized in Louisiana.\*

**124. Political Parties in Louisiana.**—In 1828 a high tariff was adopted by the United States government. Its object was to protect American products against foreign competition. The revenue from the import duties was to be spent in building roads, canals, and in other internal improvements. Those who

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\* Cf. Hennen's *Digest*, d. 357.

avored this tariff formed the so-called American party, which a few years later came to be called the Whig party. Their opponents, known as the Democratic party, were opposed to the granting of large powers to the national government, and favored the theory that internal improvements should be left to the state governments. In short the Democrats disapproved of "protection" and wished to give more power to the people.

**125. Slavery Becomes a Party Question.**—Until the year 1843 the Whig party was strong in Louisiana. It held the chief offices, and all the governors were of that political faith. Now, however, the power of the Democrats began to increase rapidly. Its growth was aided by a new issue, which soon overshadowed the tariff. This was the extension of slavery, which was violently opposed by the northern Whigs and strongly favored by the southern Democrats. At this time the admission of Texas as a slave state was very popular in the south. While the Louisiana Whigs did not oppose this extension of slavery, they did not wish to see Texas a part of the United States, for fear it would prove a rival in the production of sugar, and as they were already identified with the northern Whigs on the subject of a high tariff, they began to lose popularity in their own State.\* In 1844 the presidential election depended upon the electoral vote of Louisiana. John Slidell, a prominent politician, succeeded in carrying the State for the Democratic candidate Polk, who was accordingly elected President. From this time until the Civil War Louisiana

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\* See *Memoirs of Louisiana*.

was under the control of the Democrats, who ousted the Whigs and held all the offices.\* The first Democratic governor was Alexander Mouton (1843-46).

**126. The First Constitution.**—During Mouton's administration a new constitution was adopted, which was the natural outcome of the Democratic wave that was sweeping over the State. The constitution of 1812 had permitted the legislature to choose the governor from the two candidates receiving the largest number of votes. It had required the governor to have a landed estate of \$5,000, a senator one of \$1,000, and a representative one of \$500. The privilege of voting was granted only to those who had previously paid a State tax. Moreover, the governor enjoyed large powers in the appointment of local functionaries; and the State had pledged its support to a considerable number of banking establishments and railroads. The time had now come when the Democrats could maintain that this was too aristocratic a form of government; it gave to the richer classes privileges which should be shared alike by all. Easy communication between different parts of the State had helped the spread of Democratic principles, and the new party received much support from the immigrants crowding into the northern part of the State, who cared nothing for the "protection" of sugar or other Whig principles.

**127. Second Constitution.**—In the new constitution (1845), we find a very different order of things.

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\* In the presidential campaign of 1849, however, the Whigs managed to carry the State for General Zachary Taylor, who had lived in Louisiana.

There is no property qualification for governor, senator, or representative. The candidate for governor receiving the highest number of votes is to be declared elected without the intervention of the legislature. There is no restriction on the suffrage; the appointive power of the governor is considerably curtailed; and the legislature is forbidden to pledge the faith of the State to foster new enterprises. Most important of all, a superintendent of education is to be appointed by the governor to guard the interests of the public schools; thereby relieving the secretary of state, who had previously joined this duty to those already belonging to his office. The Whigs now maintained that the Democrats had gone too far; while the Democrats declared that their opponents were too old-fashioned and conservative; and that democracy could always be trusted to govern wisely.

**128. Constitution of 1852.**—After the constitution of 1845 had been in force for seven years, the Democrats, who had everything their own way, determined to frame another that would stretch still further the power of the people. Accordingly, in 1852, another was adopted in which the principal changes were that the governor was deprived of nearly all the appointive power left him under the former constitution. Even the justices of the Supreme Court were now to be elected by the people. Such extreme democracy, as we shall see, has not stood the test of time, and in our day, the power of the governor has been increased. As the Constitution of 1845, however, was found to have gone a little too far in restricting the incorporation of new enterprises and the



increase of the State debt, the new constitution granted greater powers to the legislature in these matters, with certain provisions to avoid recklessness. This constitution satisfied the people until the Civil War forced another upon them.

**129.** The “Know Nothing” Party.—While the Democrats were gaining strength, the Whigs disappeared from political life. In Louisiana many of them went over to the “Know Nothing” party.\* This party, which was in favor of allowing only native-born Americans to hold office, and which was strongly opposed to the Roman Catholics, held sway for a while; but a secret organization of such a character could not succeed in the United States. It opposed the freedom of religion and the broad hospitality for which America has always been famous. Hence its adherents soon fell away. When it disappeared the National Republican party rose into prominence in the north and threatened the abolition of slavery.

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\* So called because when questioned as to their objects, they always answered; “We know nothing in our principles contrary to the Constitution.”

## CHAPTER XVII

### THE MEXICAN WAR ; EDUCATION ; YELLOW FEVER

**130. War with Mexico.**—In 1845 General Zachary Taylor was sent by the U. S. government to Texas. Texas had just been admitted as a State ; but there was a quarrel over the Mexican boundary. In 1845 Congress declared that the United States were at war with Mexico through the hostile acts of the latter country. General Taylor called upon Governor Isaac Johnson of Louisiana, to send him Colonel Persifer F. Smith and four regiments. This appeal caused great excitement and enthusiasm in the State. The glories of Chalmette were recalled, and, although the cause was far less worthy, the young men were as eager to enlist as under Jackson. The legislature of Louisiana voted \$100,000 to aid her sister State. Nearly 50,000 Louisiana troops were sent to Texas, and in the subsequent war they fought with bravery on many a battle field. The details of the conflict must be omitted. It was marked by a series of victories for the Americans.

**131. Value of Education.**—It would be an ungrateful task for the historian if, during this period, he were able to record nought but the material progress of the State. Unless a State is advancing its standard of morality, unless it is extending its educational advantages ; its prosperity, though it be great in material matters, cannot be said to rest upon a solid foundation. Every State, if it is to survive,

owes to civilization a debt which must be paid sooner or later.

**132. The Educational Awakening.**—It is easy, however, to show that Louisianians were now awakened to the importance of popular education as a basis for progress both in morals and in religion. Until the year 1845 popular education, as we learn from the messages of the governors, had been almost a failure in Louisiana. It is true that large sums of money had been appropriated to the cause of education, but they had been wasted upon certain pretentious academies and schools, which were required to receive a number of indigent scholars, but which were permitted to charge fees for those that were able to pay. Such a system could not be a success. The poorer classes refused to take advantage of schools in which their children were not on an equality with the sons of richer parents. The Constitution of 1845, however, changed all this. The schools were made absolutely free, while the following provisions helped to create a new epoch in the educational system: 1. There shall be a State superintendent of education and in each of the parishes a local superintendent. 2. The public schools of the State shall be supported by a poll tax, by the sale of public lands, and by a local tax levied by the police jurors of each parish.

**133. Superintendent Dimitry; His Difficulties.**—The first superintendent of public schools appointed was Alexander Dimitry, a ripe scholar and an experienced teacher, who became the founder of the public school system and whose memory Louisiana still reveres. By a study of the reports he made to the

legislature, we are able to appreciate his noble labors and the obstacles he had to overcome. Like other southern States, Louisiana was an unfavorable field for the spread of popular education. The chief causes were : (1) The large plantations separated the people to such an extent that it was difficult for the parents to send their children to the schools. (2) It was a prevalent idea that education should be conducted not by the State, but by the family. Hence the large planters had private schools in their own homes, and if the public schools in their neighborhood were not successful, they obtained a portion of the State appropriations and used it in paying the salaries of their private tutors. When the children grew up they were sent away to northern colleges or to Europe. (3) It has been claimed with much plausibility that the presence of slavery in the south impeded the progress of public schools, by preventing the rise of a middle class of laborers from which the northern schools have always drawn large numbers of pupils. This was true of the country parishes, but not of New Orleans, where all classes of society were represented.\*

**134. His Successors.**—In spite of all these obstacles Dimitry and his successors met with a large measure of success. The schools of New Orleans, especially increased rapidly in usefulness. In 1858, when the educable population of the State was about

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\* Naturally the slaves received no instruction. Indeed the agitation for the abolition of slavery, which, after 1840, was rapidly spreading in the North, made the South pass severe laws against anyone teaching slaves to read. It was feared that the slaves if they were educated, would be more likely to rise against their masters.

60,000, the number of pupils in New Orleans was 20,000, while in the country parishes the number rose to 23,000. The same year, a Normal School, the first in Louisiana, was opened in New Orleans.

**135. The First University. Literature.**—Eleven years before, the University of Louisiana\* had been founded with the departments of medicine, law, natural science and letters. Its medical department had been in existence since 1834. In literature Louisiana now began to make important progress. Distinguished writers in both French and English made their appearance; while the representatives of the State in Congress were conspicuous for their eloquence and statesmanship.†

**136. Yellow Fever.**—For three years (1853-55) of this period, the yellow fever proved a more terrible scourge than ever before in the history of New Orleans. On one fatal day in August, 1853, there was a death every five minutes, and the total number for the year was not less than 8,000. In the two following years the pest returned, and the mortality was so great that out of a population of 156,000 the number of those that perished was 37,000.‡ The disease spread to some of the smaller towns of the State, which were almost ruined by its ravages. During

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\* After many vicissitudes this institution is now established on a firm basis as the "Tulane University of Louisiana."

† The literary activity of the time is well shown in *De Bow's Review*, published in New Orleans, during this period. Its pages contain many interesting articles on the institutions and the industrial development of the South.

‡ See Cable's *History of New Orleans*.

such visitations business was practically suspended ; but no sooner had the progress of the disease been checked by the coming of frost than both agriculture and commerce began to show their wonted activity. Never had Louisiana been so prosperous as on the eve of the great Civil War.

## CHAPTER XVIII

### THE CIVIL WAR, 1861-1865

#### **137. The Strength of the North and the South.—**

In wealth and in population the North had been growing more rapidly than the South. The institution of slavery, upon which the South believed her prosperity depended, was in reality a check upon that prosperity ; for slave labor was not available for manufactures or for any work requiring skill and intelligence. Moreover, the presence of slavery in the South tended to prevent the immigration of the working classes. Free labor did not care to come into competition with slave labor. Hence in 1860 the population of the North had risen to twenty-three millions, of whom none were slaves ; while that of the South was only nine millions, of whom three and a half millions were slaves. In both houses of Congress the South was outnumbered. This majority in Congress had enabled the North, some years before, to pass tariff laws which protected Northern manufacturers, but which, the South believed, threatened to ruin her agricultural classes. Much bitterness of feeling had been aroused in the past by this difference of interests.

**138. The Attitude of the Two Sections. Secession.—**Now the National Republican party, which came into power with the election of Lincoln in 1860, was known to be opposed to the institution of slavery, and especially to its extension. In accordance with a

provision of the federal constitution, Congress had passed a law requiring the return of fugitive slaves ; but the legislatures of nearly all the Northern States had enacted "personal liberty laws," the object of which was to nullify the act of Congress and prevent the return of the slaves.\* In many cases, also, Northern people had banded themselves together to assist fugitive slaves in escaping to Canada by what was called "The Underground Railway." This conduct naturally aroused bitter feelings in the South, and these feelings were intensified by the famous raid led by John Brown in 1859 to liberate the slaves in Virginia. If such expeditions continued, slave insurrections would be the inevitable result, and the lives of white families living on plantations would no longer be safe.

**139. Secession of the State.**—Thus threatened, as she believed, in her most vital interests, the South thought the time had come to separate from the North and form a southern confederacy. This was the right of secession, which, in 1802, had been asserted by Kentucky, and in 1812 had been advocated by Josiah Quincy, of Massachusetts.† (See pp. 82 and 97). The determination of the new President, however, was to maintain the Union by force of arms if necessary, and the two sections, each with a proud consciousness of rectitude, plunged into a conflict which proved one of the most disastrous of all time. Following the lead of South Carolina and her sister

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\* Read Woodrow Wilson's *Division & Reunion*, p. 208.

† The right of secession is admirably defended in Dr. J. L. M. Curry's *The South*.



States, Louisiana passed an ordinance of secession, January 26th, 1861. The limits of this work permit us merely to outline those scenes of the war which belong to Louisiana.

**140.** Defence of New Orleans.—For many months after the beginning of hostilities, Louisiana found the war far from her borders. The famous Louisiana artillery, however, and other troops, were dispatched to the scene of conflict in Virginia, and the people of the State knew that they had deep interests at stake in every battle. Still the possession of the Mississippi was too important a matter to be long neglected by the Federal government. In the spring of 1862 two expeditions were on their way to New Orleans, one coming down the river and one coming up. New Orleans was hardly prepared to meet any but a land force. Requisition after requisition had been made upon General Mansfield S. Lovell, who was in charge of the Gulf department, for arms and men to aid Beauregard and other Confederate generals in the Virginia and Tennessee campaigns. Now that the danger was imminent, Lovell found it impossible to procure what was necessary for the defence of the city. Great reliance, however, was placed by the Confederate government in the forts Jackson and St. Philip, which defended the river seventy-five miles below the city. Between them were placed a number of old hulks, bound together by chains, to obstruct the channel. Above them there were seventeen armed vessels under General J. R. Duncan. It was hoped that no fleet would be able to pass the forts and reach New Orleans, while the batteries at Vicksburg would

prevent the descent of the Federal fleet from above.

**141. Farragut Passes the Forts.**—On the 19th of April, 1862, a Union fleet, consisting of powerful gunboats and mortar schooners, in all forty-three vessels—anchored below the forts. After bombarding the forts for several days, the flag-officer, David G. Farragut, succeeded in breaking the chains that held in place the obstructions, and at two o'clock on the morning of the 24th, he gave the signal to run past. The forts made every effort to stop him. Shot and shell poured down upon the advancing vessels as they came abreast, while the river was soon ablaze with fire rafts. But nothing could daunt the determination of the Federal commander. The Confederate fleet above the forts was totally unable to cope with the force that Farragut led against it and it was soon scattered.

**142. Farragut Captures the City.**—Leaving his mortar schooners to shell the forts, Farragut steamed up the river, and, scarcely lessening his speed as he passed some batteries at Chalmette, he anchored in front of New Orleans. As the river was very high the guns of his vessels commanded the whole city. Seeing that resistance was useless and would endanger the lives of thousands of women and children, General Lovell retired with his forces, and Farragut took possession until the arrival of General B. F. Butler, who followed him with 15,000 men. When the Federal fleet was approaching, the inhabitants, wild with excitement, had piled upon the levee thousands of bales of cotton, and had added to the mass

hundreds of hogsheads of sugar and molasses. To all this merchandise torches were applied until the heavens were black with the smoke of the conflagration. There was a grim determination to prevent these valuable supplies from falling into the hands of the enemy. May the first General Butler took possession of the city, and continued in command till the following December. During these few months, he contrived, by his petty tyranny and by the indignities he heaped upon the best citizens of New Orleans, to gain for himself the condemnation of the whole South.

**143. The Loss of New Orleans.**—It is hard to estimate the injury which the Confederacy received from the loss of New Orleans. The city served the Federals throughout the war as a point of departure for their military expeditions in the far South. It was the key to open the great river. A portion of Farragut's fleet, proceeding up the Mississippi, forced Baton Rouge to surrender, and, running the gauntlet of the batteries at Vicksburg, joined the Federal fleet that was descending the river. A desperate attempt was made by the Confederates under General John C. Breckinridge to recapture Baton Rouge, but it failed. They had to content themselves with Port Hudson. This town they fortified and held till the fall of Vicksburg in 1863.

**144. Southern Louisiana.**—In southern Louisiana General Richard Taylor had been placed in command of such Confederate troops as he was able to enlist. The Creoles flocked to his standard, and Taylor contrived to send to the aid of Vicksburg and other Confederate points large quantities of salt from

the Avery mines, salt beef, sugar, and molasses. Such help was invaluable. As it was all important that the Trans-Mississippi country should remain in the hands of the Confederates, President Davis appointed to the command of the whole department a distinguished officer, Lieut.-General E. Kirby Smith, with headquarters at Shreveport on the Red River. General Taylor had found it impossible to prevent an army of 16,000 Federals under General N. P. Banks from marching up the Teche and taking possession of Alexandria. As soon, however, as Banks had crossed the Mississippi to lay siege to Port Hudson, Taylor made a foray through southern Louisiana, and completely routed a Federal force stationed at Berwick Bay. This threw into his hands large supplies of provisions and medicines, with a great quantity of ammunition and small arms.

**145. The Disasters of 1863.**—The year 1863 was a disastrous one for the Confederacy. Vicksburg having been captured by General Grant, and Port Hudson having surrendered to General Banks, the whole length of the Mississippi to its mouth was under Federal control. Moreover General Lee had been repulsed with heavy loss in his invasion of the North. Such disasters could not fail to cripple the South.

**146. Banks's Invasion.**—The following year (1864), the Federals determined upon an invasion of the Trans-Mississippi department. General Banks, with a force of nearly 28,000 men, marched into western Louisiana, a fleet of seventeen gunboats accompanying his army up the Red River. He expected to end the campaign with one blow. His

army, however, advanced in detachments, and General Taylor, who at first had retreated, made a stand at Mansfield, with the intention of routing Banks's advanced forces before the rest came up. The battle ended in a complete victory for the Confederates (April 8). Banks retreated to Pleasant Hill, leaving 2,500 prisoners and 250 wagons in the possession of the victorious army. His whole force engaged was about 13,000, while Taylor had 8,800. On the following day, at Pleasant Hill, another engagement took place. Banks had now brought up 18,000 men; but Taylor, by skillful management of his troops, succeeded in driving the Federals off the field. Banks's invasion had been a complete failure.

**147. The Retreat.**—On his retreat to Alexandria, General Banks swept the country clear of its most valuable property, and the memory of his destructive march still lingers in the minds of north Louisianians. When the Federal fleet, coming down the Red River, reached Alexandria, the water was so low that the gunboats could not be gotten over the falls. By a splendid engineering feat, however, a dam was built, and the vessels were successfully floated over the obstructions.

**148. The End of the War.**—The war in Louisiana now came practically to a close. One year later, the surrender of General Lee in Virginia completed the last act in the great drama. Exhausted in her resources, the South gave up the struggle. The war had not settled which side was right in the interpretation of the constitution; but it had, in any case, given a practical answer to the great questions which had

so long divided the two sections. When the passions of the conflict had cooled, there was the possibility of a country united by a common sentiment of patriotism. This possibility became a reality within the first generation after the close of the Civil War, when the men of the South and the men of the North fought side by side under the stars and stripes.\*

**149. The War Governors.**—From 1860-64 the governor of Louisiana was Thomas C. Moore, a worthy planter, who gave his best efforts for the success of the southern cause. In 1864, that portion of the State which was not under Federal control, elected as governor, Henry W. Allen, whose gallant services in the Confederate army had won for him the admiration of the people, as his civic virtues had won for him their affection. In the district held by the Federals the choice fell upon Michael Hahn; so that there were two governors in the State.

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\* The splendid spirit of a reunited country is found in the resolutions introduced by General Stephen D. Lee at a reunion of the Confederate Veterans in July, 1898 :

“Whereas, the United States of America are at present engaged in a war with Spain in the interest of human liberty; and

“Whereas, our comrades and our sons are members of that glorious army and navy, the achievements of which are now exciting the wonder of mankind ; therefore be it

“Resolved, That we, the survivors of the United Confederate Veterans, pledge our loyalty, and the hearty co-operation of the organization in this crisis of affairs, to stand ready at all times with men and money, irrespective of political affiliations, to support the President of the United States, as commander-in-chief of our army and navy, until an honorable peace has been conquered from the enemy.”

## CHAPTER XIX

### RECONSTRUCTION

**150.** Views of the State.—When General Lee surrendered at Appomattox Court House, the South believed that the war was over. President Lincoln was willing that the seceding States should be taken back into the Union, if there were to be no more slavery and no more secession. These conditions the South was ready to accept. Already, in 1864, a new constitution had been framed for the State by the Republican government in Louisiana, which carried out Lincoln's views, and in the following year the legislature declared in an address to Congress that Louisiana was unreserved in her loyalty to the United States government. It was believed that nothing more would be required of the exhausted State, and that she would be allowed to take up once more the ordinary tasks of life, and recuperate, as best she could, from the ravages of war.

**151.** Views of Congress.—But after the death of Lincoln, Congress, which was overwhelmingly Republican, was not satisfied to let the South off so easily. The slaves, set free by the war, must be guaranteed protection in the courts and at the ballot-box. No seceded State was to be readmitted to the Union until, by ratifying the XIVth amendment to the Federal Constitution, it had guaranteed to the freedmen

all the rights of citizenship and had forbidden any "rebel" to hold office until his disabilities had been removed by Congress. President Johnson, the successor of Lincoln, did not approve of this policy; but Congress justified its course by declaring that a number of Southern States had passed statutes with regard to labor-contracts and vagrancy that bore heavily upon the newly emancipated freedman, and that would virtually result in reducing them to a kind of slavery.\*

**152. Louisiana Readmitted.**—As all the Southern States, except Tennessee, were opposed to accepting the XIVth amendment, Congress passed in 1867 an "iron-clad" reconstruction act. Under this act Louisiana saw her borders invaded by United States troops just as if the war were still in progress. The commander of these troops became the dictator of the State, appointing and removing governors as he pleased. Under this new régime, no one was allowed to vote who could not prove that he had always been loyal to the Federal government. As the whole machinery of election was in the hands of the military commander, it was an easy task in 1868 to frame a new constitution which was in accord with the XIVth amendment.† Louisiana, having thus nominally complied with all the conditions laid down by Congress, was readmitted to the Union (1868).

**153. Misgovernment.**—For nine years longer,

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\* See Wilson's *Division & Reunion*, p. 260.

† The number of freedmen registered was 84,436, while the number of whites was only 45,218. This gave the control of the State to the ex-slaves and their political leaders.



(1868-1877), however, Federal troops were kept in Louisiana to see that the reconstruction laws were strictly executed. The XIVth amendment had been adopted, but the Southern whites were exasperated, and were constantly endeavoring to prevent their former slaves from voting or holding office. In Louisiana, as in other Southern States, secret organizations were formed, which either frightened the negroes away from the ballot box, or, in many cases, resorted to acts of extreme violence. In the meantime a number of political adventurers, (the so-called "carpet-baggers"), who came down from the North to seek their fortunes in the rich State of Louisiana, proceeded to seize all the offices for themselves and their followers. Secure of the negro vote which was given to them largely because the freedmen believed that all Republicans must be their friends, and supported by the Federal troops, which enabled them to treat with contempt the efforts of the property-owners to recover control of the government, these politicians began to rob and pillage the State treasury with unblushing affrontery.

**154. The Conduct of the People.**—The people of Louisiana behaved with wonderful moderation. They saw the State debt increase in a few years from ten million to fifty million dollars; they saw the taxes rise in ten years 450 per cent.; they saw a single session of the legislature cost \$900,000; they saw the bonds of the public school fund sold at public auction and the proceeds divided among the conspirators. All this, and much more, they endured for six years, until the wealth of the State seemed destroyed as if by a

great conflagration.\* When, however, the "Carpet-baggers" began to quarrel over the spoils, two factions were formed, and an opportunity was thus given to the Democrats to get possession of the government. For the factions, by accusing each other of robbery and corruption, gradually made clear to the North what evils Louisiana was suffering, and finally gave rise to a party which favored the withdrawal of the United States troops. The white Democrats now formed themselves into leagues for the liberation of the State. "The White League" of New Orleans and "The White Man's Party" of the country parishes were organized (1874) by men who owned nearly all the property in the State and who were determined to control the taxation of that property.

**155.** The 14th of September.—The Republican governors, H. C. Warmoth (1864-1872), and Wm. P. Kellogg (1872-1876), had surrounded themselves with a body of police called the "Metropolitans." They were sent out to arrest Democrats who refused to pay the exorbitant taxes or who resisted in any way the orders of the Executive. On the 14th of September (1874), there was a sharp conflict in New Orleans between the Metropolitans under Generals Badger and Longstreet and the White League under General Ogden. The object of the League was

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\* The Northern view of Reconstruction is thus given by Alexander Johnston in his *History of the United States*:—"The whites asserted that the reconstructed governments made bad laws and stole the public moneys. The reconstructed governments asserted that the whites resisted the laws by violence, and whipped or killed negroes to prevent them from voting. Both assertions seem to have been correct."

to get possession of some firearms that had been imported for their use, and that the Republican governor naturally wished to keep from them. Though a number of the League were killed, the "Metropolitans" were put to flight, and the governor was forced to take refuge in the Custom House. By an appeal to the Federal government, Kellogg was restored to office, but the power of the "Carpet-baggers" was greatly weakened. At the next election (1876) the Democrats, who were now joined by large numbers of freedmen, carried the State by 8,000 majority for Francis T. Nicholls, a distinguished general of the Confederate army. The Republicans claimed the election of their candidate, S. B. Packard; but President Hayes decided to withdraw the United States troops, and thus left Packard without support. With his fall, "carpet-bag" rule disappeared in Louisiana. It was time.

## CHAPTER XX

### NEW CONSTITUTIONS. PUBLIC IMPROVEMENTS

The subjects that demand at least a brief mention during this period are the new constitutions, the levee system, the jetties, agriculture, maritime sanitation, the rise of manufactures, and the progress of public education.

**156. Constitution of 1879.**—Under the new régime the reorganization of the State government was a matter of prime necessity. The constitution framed under the "Reconstruction" rule must yield to the changed conditions. Accordingly in 1879 a new constitution was adopted. Like the recent constitutions of many other States it showed a profound distrust of legislative action. Nearly all special legislation was forbidden. The heavy debt of the State was not repudiated; it was simply placed on a better financial basis; but the General Assembly was given no power to contract any further debt or liabilities whatever on behalf of the State. This was a natural provision after the wild orgies of the "Reconstruction" legislatures; it represented the reaction from the license of that period. But the rate of taxation was so limited that the public school system and local improvements were severely crippled. In other respects, also, the new constitution was found unequal to the needs of a rapidly developing State, and the general dissatisfac-

tion led to frequent amendments,\* and finally to the adoption of the present constitution (1898).

**157. The Levee System.**—The problem of protecting Louisiana against the floods of the Mississippi has been a perplexing one ever since the year 1727, when Governor Perier built a levee nine hundred feet long in front of the little settlement of New Orleans. The great river, while it has built up the prosperity of the State, has frequently threatened to undo its good work by inundating the richest lands, and ruining habitations and crops alike.

In the eighteenth century the plantations were protected by the owners under a threat of confiscation if they failed to build levees. Since the settlement of the great western country, however, deforestation has proceeded so rapidly that the floods have been more disastrous than ever before; for the thick forests prevented the rains from running so quickly into the river channels. Hence it was found necessary to supplement the labors of the individual planters in levee building.

**158. Assistance of the Federal Government.**—In 1850 the Federal government came to the assistance of the inhabitants of Louisiana by donating eight-and-a-half million acres of so-called swamp land in the State, the sale of which, it was hoped, would materially aid in the building of levees. Some progress was made in levee construction, but the great

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\* Under the constitution of 1879 the choice for governor was Louis A. Wiltz (1880-1881), who died one year after his inauguration. He was succeeded by the lieutenant-governor, S. D. McEnery. In 1884 McEnery succeeded himself, thus serving seven years as governor.

flood of 1882 came and overwhelmed 5,600 square miles of land in Louisiana alone, causing a loss that amounted to fifteen million dollars. It was evident that something must be done and that quickly. The Federal government, recognizing the importance of the Mississippi as a great highway of commerce, began at this period to make large appropriations for the improvement of the levees. This Federal aid, together with the exertions of the State government during the administrations of McEnery and of Nicholls (second term, 1888-1892) worked a revolution. For in 1890, though the flood rose higher than in 1882, the levees were so much stronger that, while in 1882 the breaks or crevasses numbered two hundred and eighty-four, aggregating fifty-six miles in width, those of 1890 numbered only twenty-three, aggregating just four and one-quarter miles.\* At the present time, the further strengthening of the levees by the Federal and State authorities is going on, and as the bottom of the river shows no sign of being elevated by the deposits of silt, we may hope soon to see the floods absolutely under control. The levees are now higher and stronger than ever before in the history of the State.

**159. The Jetties.**—One of the greatest obstacles to the commercial prosperity of New Orleans and of the State had been the lack of deep water at the mouths of the Mississippi. The silt brought down by the river formed a shifting bar, which often prevented ships of large burden from coming up to the city. Finally, however, in 1874, Captain James B. Eads, a distinguished engineer, submitted to the United States

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\* See *Memoirs of Louisiana*.

government a plan for removing the impediments to navigation. Jetties were to be built in the south pass of the Delta, which would force the strong current of the river to carry the silt out to sea. The plan was adopted, Congress made the needed appropriations, the jetties were completed in four years, and a channel was secured from twenty-six to thirty feet deep. It will be remembered that in the eighteenth century a similar plan had been proposed by the French engineer, Pauger. This triumph of engineering skill gave a great impetus to the commerce of Louisiana and of other States lying along the Mississippi. Though more than six million dollars have been expended on the work, and though additional sums will be necessary for the gradual extension of the system, the benefit to the Mississippi valley will more than compensate for the outlay. With hundreds of large vessels at her docks, New Orleans has become the great shipping port for the grain of the west.

## CHAPTER XXI

### THE PRESENT CONDITION OF LOUISIANA

**160. Northern Louisiana.**—The northern portion of the State differs from the southern in the character both of its products and its population. The chief products are corn and cotton, though hay, oats, and potatoes are extensively raised. The lands are wonderfully fertile. The valley of the Red River is comparable to that of the Nile in the production of cotton. Throughout this portion of the State, one meets with small farms and numerous towns, in striking contrast to the southern portion, where the plantations are large and the towns few. The people consist of settlers from the west and from the Atlantic States.

**161. Southern Louisiana.**—In Southern Louisiana, the chief products are sugar, rice, and tobacco; while oranges, figs, and other fruits grow in magical abundance. Though there has been much immigration from the western States, a large number of the planters are of the old Creole stock, who speak the language and preserve the traditions of the past. Formerly every planter of sugar had his own mill; but with the reduced price of sugar it has been found necessary to build large central mills, to which the smaller planters sell their cane, and which by the use of improved machinery, are able to reduce the price of manufacturing the sugar. Louisiana now stands third in the production of cane sugar, Cuba and Java being



the only countries that raise larger crops. The settlers in western Louisiana have found the cultivation of rice so cheap and profitable that they devote all their energies to the production of that staple. More rice is produced in Louisiana than in all the other southern States put together.\*

**162. Yellow Fever and Quarantine.**—After the close of the Civil War, the terrible visitations of yellow fever continued at intervals. In 1878, especially, there was a fearful epidemic, which carried off 4,000 persons in Louisiana. As the presence of the disease interfered seriously with the prosperity of the State, measures were taken to prevent its entrance into Louisiana. In 1882, through the inventive genius of Dr. Joseph Holt, of New Orleans, a thorough system of disinfecting vessels was established at the mouth of the river. For fifteen years the fever was successfully kept outside the boundaries of the State; but in 1897 it was brought to New Orleans by persons fleeing by railway train from Ocean Springs, Mississippi, where the disease had prevailed for some time without being recognized. It lasted from September the eighth until the following January; but the disease was milder than ever before, and generally yielded readily to treatment. The official reports show that there were in Louisiana 1,935 cases, most of them in New Orleans, and that the total number of deaths was only 306. The return of the disease after an

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\**Statistics.* The rice crop of Louisiana in 1879 was only 20,728,528 pounds; in 1896 it was 180,020,000 pounds. For the year 1895 the cotton crop of the State was 721,591 bales. The sugar crop for the same year was 710,827,438 pounds.

absence of so many years was regarded as a calamity, and the State Board of Health has been making strenuous efforts to prevent its importation either by sea or land.

**163. Nicholls' Second Term, 1888-1892.**—At the expiration of Governor McEnery's term the governor elected was General Francis T. Nicholls, who had served the people in that capacity from 1877 to 1880. The Louisiana Lottery Company, which had been chartered twenty-five years before, now asked for a renewal of its charter, promising to pay into the treasury of the State annually a portion of its large profits. Bitter opposition to its continuance, however, soon became manifest. It was the burning question of the next gubernatorial campaign. Finally the United States government interfered by refusing the Lottery Company the use of the mails. Thus crippled the company thought it wise to retire from the contest.

**164. Murphy J. Foster, Governor, 1892-1896.**—The anti-lottery candidate was Murphy J. Foster, of St. Mary Parish. In 1892 he was elected by a handsome majority over three opponents. His administration was so successful that at the end of his term he was re-elected. In 1900 he was succeeded by W. W. Heard, of Union Parish, who is the present governor of Louisiana.

**165. The Present Constitution.**—During Governor Foster's second term the question of framing a new Constitution for the State was widely discussed, and the General Assembly voted to submit to the people the proposition of calling a constitutional con-

vention. A majority of the popular vote cast being in favor of such a convention, the delegates met in New Orleans February 8, 1898, and continued in session until May 10 of the same year. The Constitution adopted by this convention went into effect without being submitted to the people. It made important changes in the fundamental law with reference to the suffrage, the judiciary, and other subjects. Its main provisions will be considered under the head of Civil Government.

**166. Manufactures.**—In the development of manufactures the last quarter of the century has marked an important era in Louisiana. Before the war it was found that slave labor was well suited to agriculture, but was ill adapted to manufactures. Since the abolition of slavery, however, it has become clear that the State in the sharp competition of modern times cannot depend for its prosperity upon agriculture alone. Hence manufactures, which were formerly limited to the refining of sugar, have now been extended until they embrace many kinds of industries and represent large amounts of capital. While, therefore, before the war the industrial establishments of the State were hardly worthy of mention, they now number nearly two thousand in New Orleans alone. The annual valuation of their finished product is about \$48,000,000, and the amount paid in wages is \$10,000,000. Besides the rice and cotton mills, large investments have been made in cotton-seed mills, breweries, foundries, and tobacco factories. Surely this is a marvelous transformation.

**167. Education.**—While Louisiana is far behind

many of her sister States in the matter of public education, and her percentage of illiteracy is much too high, still the efficiency of the schools has increased, the sums expended for their support have been more liberal every year, and the number of pupils has grown rapidly.\* The progress of the public schools has accompanied the development of the higher education in the colleges and universities. Not only are the various colleges for colored youth well patronized, but the Normal School, the Industrial College of Ruston, the Louisiana State University, and Tulane University have raised the standard of education and have reflected honor upon the State.

Such in outline is the history of Louisiana from the earliest historic times to the present day.

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\* In 1884 the number of pupils enrolled was 81,024 in a population of 940,000 ; in 1899 it was 196,169 in a population of 1,381,000.

## PART II

### CIVIL GOVERNMENT OF LOUISIANA

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#### CHAPTER XXII

##### GOVERNMENT

**168.** What is Government?—When we speak of the government of a country, we mean that agency by which its political affairs are controlled. Under this agency are included not only the constitution and laws of the country but also the officials by whom these are administered. It is not unusual, however, to call the body of officials “the government,” because in them are embodied the powers. Thus, we say that the government of the United States was changed in 1789 when the new constitution was adopted, or that the government was changed in 1897 when a Democratic administration gave place to a Republican one. The word *govern* is derived from the Latin *gubernare*, which means to steer or guide. In modern times, however, as Professor Seelye suggests, it means more than simply to hold the helm; it also means to control the ship. Hence a governor is to be regarded as both the helmsman and the captain of the Ship of State.

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\* See *The American Government*, Introduction.

**169. Kinds of Government.**—Various kinds of government have been established in the world, viz.:

1. *Monarchies.*—Monarchy is the oldest form of government in civilized society, and many examples of it are still found in the world. It takes two forms. When the controlling power is centered in one man, who holds the destinies of the people in his hands, it is called a despotism. Such is the government of Russia at the present time. When, however, the power is given to a king or queen who is held in check by a written or an unwritten constitution, we have a limited monarchy. England formerly had a government of this character, but in modern times the power of the Crown has been so much weakened that the government now resembles very closely that of a republic.

2. *Oligarchies.*—An oligarchy is a government in which the powers are administered by a small body of men, generally the nobles of the country, who have succeeded in throwing off all constitutional checks. Such a form of government has often proved very corrupt, and it is no longer found in civilized countries; but both in the ancient and in the mediæval worlds it was not uncommon. Read, for example, the history of Venice and Genoa in the fourteenth century.

3. *Democracies.*—The word democracy is derived from two Greek words that signify “to govern by the people.” Hence a democracy is a form of government in which the people, either directly or indirectly, govern themselves. A state in which this kind of government exists is called a republic (from the Latin *res-publica*, a commonwealth).

**170. Republics Ancient and Modern.**—In the ancient world of Greece and Italy there were, at certain periods, republics similar in many respects to those of our own day; but they all differed from ours in one important particular. When political affairs were to be considered, as many of the citizens as could conveniently come together would assemble and transact the business by their votes. In modern times we have a different method—that of representation. Instead of attending in large bodies, the citizens now send their representatives, and these conduct the affairs of the state. This is a far better method; for a large mass of citizens, it has been found, cannot legislate so wisely as a limited number of representatives. Under the modern system it is possible for a single government to legislate successfully for many millions of people, and as the representatives are elected by the people and are held responsible for their acts, every one feels that he has a share in the government; and there is less danger of revolutions upsetting the existing order of things. Thus society is able to develop by the gradual method of improvement which is called evolution. The best example of a modern republic is the United States of America. As the separate States, however, are in many respects independent of the general government, the United States has sometimes been aptly called a Republic of Republics.

**171. The Origin of Government.**—Government may be traced back to primitive society, where in every family the father was the priest, the judge, and the ruler. Such was the patriarchal type as seen in the history of Abraham. As families developed into

clans, clans expanded into tribes, and tribes swelled into nations, it became necessary to have some common ruler for all. Then some strong leader either was chosen by the people themselves to rule over them or else assumed the leadership. Naturally, as the numbers increased, the character of the government became more complex, the functions of priest and judge, for instance, being separated from those of leader or king, until finally we reach the elaborate political machinery that exists in a modern state.\* It is to be remembered, however, that while society has made great progress, the important unit of society is still the family. If the family life of a people is not well ordered—if the parents are unwise, or if the children are allowed to grow up in ignorance or unfilial disobedience—the state will ultimately suffer. It cannot be expected that the government of a people will be much better than the people that it represents.

**172. The Office of Government.**—The office of the government in any state or country is to protect the rights of its citizens and to see that they perform their duties. To accomplish these ends legislative assemblies are provided to pass laws for the welfare of the people; officers to see that the laws are faithfully executed; and courts of justice to settle all con-

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\* "Whether by original force or by voluntary recognition and establishment, whether founded upon acknowledged supremacy of personal prowess and sagacity of the leader selected, or whether springing from patriarchal authority, the public authority becomes established, cannot now be known and undoubtedly it differed in different instances. But, however, originated, a public authority once created, the State becomes an established fact."—Willoughby: *The Nature of the State*.



tentions. Thus we find that the Constitution of the United States establishes a legislative department, an executive department, and a judicial department. These departments constitute the Federal Government, and in the Constitution of each State the same division of powers is made for the control of State affairs.

**173. The Necessity of Government.**—It has sometimes been declared that a government is a necessary evil. This means that if men were so constituted as to be able to live together in charity and peace, there would be little or no need of a government; but as there are many selfish and disorderly people in the world—fellows of the baser sort—some form of government is necessary to make them respect the rights of others. The true theory is that a good government makes the social state possible; that is, it enables people to live together and to enjoy all the advantages of an organized society or state. If men lived apart from one another, there would be no government necessary except that of the family, which would be extremely simple; but there would be no social progress, and no civilization. In order to make progress, men must combine, and, when they come together in communities, their interests will clash, and more and more complex forms of government will be necessary.

It has been held by some persons that as all governments are more or less corrupt, it would be well to sweep them out of existence and thus secure greater individual liberty. We call such persons anarchists. The truth is, however, that whatever may be the

faults of our governments, we enjoy more liberty under them than we should enjoy if they were destroyed. If they were all swept away, we should have not greater liberty but greater license; might would take the place of right, and neither life, liberty, nor the possession of property would any longer be secured to us.

**74. Responsibility.**—Under a despotism it may be impossible for the majority of a people to have the kind of government that they desire. The organized powers of the despot may keep them in subjection and prevent them from exercising that supreme control or sovereignty which ultimately always belongs to the people themselves. The same is true of other forms of government. Under an oligarchy, the minority get control of affairs and often hold it by means of well disciplined and organized armies. In a republic, however, like our own, there seems to be no excuse for the majority of the people if they do not obtain the kind of government they wish.\* All the laws are made by representatives, who are chosen directly or indirectly by the people themselves, and if the government is bad, the people have only themselves to blame. Hence in a republic greater responsibility rests upon the citizens than under any other form of government, to make their government the best that it is possible to obtain. In order to accomplish this, every citizen should see to it that he enjoys all the rights, political and civil, which are granted to him by the government, and, at the same time, he should

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\*The majority referred to here is the majority of the voting population.

strive to perform in the worthiest manner all the duties laid upon him. He should endeavor to have the best laws enacted and should demand that they be properly executed.

**175. Rule of the Majority.**—Of course it is understood that in a republic the will of the majority should always prevail. While means have been sometimes taken to defeat this rule, the wisdom of the principle is almost universally recognized. Hence, though the views of a citizen may be wise, he will often find himself on the losing side. He may find himself living under a government that is very different from the one he would have chosen. What is his duty in such a case? If he decides to retain his citizenship in the State, he should submit in all cheerfulness to the existing laws, and strive, by free discussion, to win adherents to his side. Hence the necessity that all citizens should be well grounded in the principles of their government, and that they should study the leading questions of the day. “When,” says Mr. Nordhoff,\* “the right side is in the minority, it is of great importance that its adherents shall be able to give pertinent and convincing reasons for their course; for thus only can a minority hope to become a majority.” The evolution of government requires that progress should be effected by argument, not by force.†

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\* In *Politics for Young Americans*.

† See Dr. B. A. Hinsdole's *American Government*, Introduction for a fuller account of the topics treated in this chapter.

## CHAPTER XXIII

### CONSTITUTIONS

**176. Object of the Work.**—The object of Part II. of this book is to explain the main features of the Government of Louisiana in the simplest manner possible, that every young citizen may learn what rights he may enjoy and what duties he will be called upon to perform. We shall discuss the provisions of the present Constitution, as well as the principal laws now in force that have been passed by the General Assembly. To explain all these fully, it will be necessary also to discuss the Constitution of the United States and its relation to the Constitution of the State; but this subject will be discussed with greater fullness in Part III. Within the State itself, however, lie most of the rights and duties of the citizen, and when these are once known, it should not be a difficult task to determine the relation that they hold to rights and duties under the Federal Government. Hence, though we recognize that Professor Bryce is right in saying that every citizen of this country, since he owes allegiance both to his State and to the Federal Government, has two loyalties and two patriotisms, we are going to concern ourselves in Part II. almost entirely with his allegiance to the State.

**177. The State Constitution.**—A Territory obtains a Constitution when it becomes a State. Con-

gress extends the privilege of Statehood to Territories with no fixed rule as to the number or character of the population. The question of admission or non-admission may rest on political grounds. Hence many of the Territories, as for instance the Territory of Orleans, have been compelled to knock more than once at "the doors of the Union." When it thinks proper, therefore, Congress passes an Enabling Act,\* authorizing the Territory to frame a Constitution and submit it to Congress. If it contains nothing in conflict with the Federal Constitution and is otherwise satisfactory to the majority in Congress, the Territory is admitted. The new State, however, may change its constitution or frame a new one without consulting Congress, provided only that no provision of the Federal Constitution is violated. Those who have read the historical sketch in this volume will remember that the Territory of Orleans was admitted as the State of Louisiana in the year 1812. Since that date public sentiment has undergone many changes, and, as a result, the State has framed no fewer than six different constitutions. The last was that of 1898, under which the people of the State are now living, and which, therefore, is the fundamental law of the State.

**178. New Constitutions.**—Of course it is not wise for a State to change its constitution without serious reasons; but it would also be very unwise for the citizens to have to live under a constitution which did not meet the approval of the majority of the voters. Such a condition of affairs would breed

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\* This act, however, is often omitted.

discontent and dissatisfaction that would, in turn, interfere with the prosperity of the people. The constitution of Louisiana has no article concerning a new instrument of government; that is, it has no provision for its own destruction. Nevertheless the General Assembly may, by a simple majority of its members and the approval of the governor, or by a two-thirds vote in case of his disapproval, order that a convention shall assemble and frame a new constitution for the State. The delegates to such a convention are elected by the people, and, when they have drawn up a constitution, it is often submitted to the people for their approval. If the majority vote for its adoption, it takes the place of the old constitution. In the South, of late years, there has been a strong tendency to accept the constitution as framed by the convention without submitting it to the people. In Mississippi, South Carolina, and Louisiana the present constitutions went into effect without the direct approval of the people. This is a return to the method by which the earliest constitutions of the States were generally adopted.

**179. Amendments.**—In case the constitution of a State requires only minor changes, it may be amended. While every constitution provides for amendments, it is regarded as desirable that the inhabitants of a State should not modify their form of government except for good reasons. Hence it is made somewhat difficult to adopt amendments. In Louisiana, any bill may become a law if it receives a majority vote of the General Assembly and is not vetoed by the governor; but when an amendment to

the constitution is proposed, it must receive a two-thirds vote of all the members elected in each House before it can be submitted to the people, though the governor's approval is not necessary. Then at the next election it must obtain the approval of the majority of those voting on the amendment before it becomes a part of the constitution. The result of the election is made known by the proclamation of the governor.

**180. Office of the Constitution.**—The Constitution of the State is its fundamental law. It creates the various departments of the government, and prescribes the duties of each. If any laws are passed by the General Assembly that seem to conflict with the constitution, they may be tested by bringing some case involving the law before the courts, and if the law is declared unconstitutional, it becomes null and void; that is, it cannot be executed.

The older constitutions in Louisiana were much briefer than the present one, which contains more than 40,000 words, and has a multitude of articles, making provision for both the local and the general government of the State. The design in making a constitution so elaborate an instrument is to cover a large number of points on which laws might be passed, and thus give very little scope to the legislature. As the constitution is not easily changed, the government of the State is thus rendered more stable.\*

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\* See Hinsdale's *American Government*, Introduction.

## CHAPTER XXIV

### LOCAL GOVERNMENT

Before taking up the main divisions of the State government—the legislative, the executive, and the judicial—it will be well to examine the manner in which the local government is conducted.

**181. The Parish Government.**—For local administration the State of Louisiana is divided into fifty-nine parishes, corresponding to the counties of other States. These parishes are corporate bodies, which can own property and sue or be sued in the courts. They are all created by acts of the Legislature. New parishes may be formed from the older ones, provided that no parish thus made shall contain less than 625 square miles of area or fewer than 7,000 inhabitants; and provided, also, that no parish boundaries shall be changed unless the proposed change is approved by two-thirds of the voters in the parish or parishes affected at an election held for the purpose. Furthermore, if one parish wishes to be merged into another, it must obtain the consent of two-thirds of its own voters as well as the consent of a majority of the voters in the other parish.

**182. Wards.**—The ward is the smallest political unit of the parish. When a parish is created by act of the General Assembly, the same act determines the number of wards, though the boundaries are laid out by the police jury. If it is desired to create a



new ward from an old one, a special act of the General Assembly is necessary.

**183. Police Juries.**—The inhabitants of each parish are allowed to manage their local affairs through a representative body called a police jury. The members of this body were formerly appointed by the governor, but since 1896 they have been elected by the voters of the different wards. (The parish of Orleans is under the government of the City of New Orleans, and will be considered separately.)

**184. Powers and Duties of Police Jurors.**—These powers and duties, which have been determined by various acts of the legislature, are so numerous that only the principal ones can be mentioned here:

(1). Police jurors fix the dates of their regular meetings and of such other meetings as they may deem necessary, and make all necessary regulations for conducting business at such meetings. (2). They attend to the making and repairing of roads, bridges, levees, etc., and levy a limited tax for the same. (3). They regulate houses of public entertainment, and impose a license charge on peddlers, keepers of barrooms, etc. (4). They lay such taxes (within the limits fixed by the Constitution) as they deem necessary for the expenses of the parish, and they appoint a treasurer to keep the parish funds. (5). They provide for the support of the parish paupers. (6). They publish an estimate of the expenditures of the parish, and every year they send to the State Auditor a complete statement of the financial condition of the parish, with the amount of its debt, the rate of taxation, etc.

**185. Qualifications, etc., of Police Jurors.**—The members of a police jury must be twenty-one years of age; they must have been citizens of the State for five years and actual residents of the election district for two years preceding their election. In addition, they must be able to read and write, and must possess in their own right, or through their wives, property worth \$250. They are elected for four years—one from each ward of the parish. Every ward, however, is entitled to an additional juror for each 5,000 inhabitants, and yet another for each additional 5,000 or part thereof in excess of 2,500. Police jurors receive a compensation of \$2 a day for each day that they are actually employed in the service of the parish.

**186. Other Parish Officers.**—Each parish has, also, justices of the peace, constables, a sheriff, a coroner, a board of school directors, and a superintendent of public schools. All these have a share in the local government. The justices of the peace, as their name indicates, aid the police juries in keeping the peace of the parish, and the constables are the special officers of their courts. The special functions, however, of the justices of the peace, the constables, the sheriff, and the coroner will be treated below under Parish Courts. As to the school officers, they will be more conveniently considered under the head of Education.

**187. The Parish Seat.**—In each parish there is a special town where the public business of the parish is transacted. This is called the parish seat. Here we find the courthouse, the jail, and other public buildings. As it is centrally located, the parish seat fre-

quently forms the nucleus of a prosperous settlement, where the inhabitants of the whole parish may gather for purposes of trade, or to listen to public speeches in political campaigns.

**188.** Limitations of Local Government.—From the description just given of parish government, it will be seen that each parish enjoys considerable liberty in the management of its own affairs. This is a wise provision, for those who live in a small district know better than the high officials of the State what they need, and the responsibility thrown upon them helps to train them in political matters. Still, it is to be remembered that the parish government is created by the Constitution and the laws of the State, and is, therefore, strictly subordinate to them.

## CHAPTER XXV

### EDUCATION : PUBLIC SCHOOLS

**189.** Importance of Public Education.—Within the last twenty years the State of Louisiana has appreciated more than ever before the necessity of establishing and keeping up a good system of public education. Only through the public schools can the mass of the people be prepared for an intelligent exercise of their duties as citizens. Hence it has been wisely said that the education of its young citizens is a debt that every State owes to posterity. Moreover, it is now generally admitted that public education strongly tends to diminish crime in a State, thereby aiding the progress of the citizens towards a higher plane of civilization. The experience of England strikingly illustrates this fact. That country, with its numerous private and its richly endowed church schools, thought it unnecessary until the year 1870 to establish a system of public free schools. The influence of the new system has been remarkable, “Since the act of 1870,” says Sir John Lubbock, “the number of children in English schools has increased from 1,500,000 to 5,000,000, and the number of persons in prison has fallen from 12,000 to 5,000. The yearly average of persons sentenced for the worst crimes has declined from 3,000 to 800, while juvenile offenders have fallen from 14,000 to 5,000. These figures are a confirmation of Victor Hugo’s saying that ‘He who opens a

school closes a prison.' ” Not only does ignorance often result in crime, but it also takes away a man's independence. The citizen that is totally uneducated is like a blind man, for he may stumble at any step. As he is dependent upon others for guidance, he thereby loses much of his liberty.

**190. Compulsory Education.**—In some States there is a law compelling parents to send their children between certain ages (if they are not already attending private schools) to the public schools. Such a law is so difficult to enforce that it has often become a dead letter, but the existence of the law shows the strong feeling that many law-makers have in regard to the necessity of public education. In Louisiana no such law has been passed. Property owners and male adults are taxed for the support of the public schools, but everybody may take advantage of them or not as he pleases.

**191. The State Organization.**—In Part I. of this volume a brief history was given of the rise of public schools in Louisiana. In this part, therefore, only the present organization need be considered. The public schools of the State are under the control of a Superintendent, elected for four years by the people, and of a Board of Education. This Board consists of the Governor, who is *ex-officio* president, the Superintendent, the Attorney General, and six citizens appointed by the Governor, one from each Congressional district. The schools for the white and colored races are separately established.

**192. Powers and Duties of the State Board.**—  
(1.) This board is authorized to provide by-laws and

regulations for all the public schools of the State. (2.) It chooses for four years the text-books to be used throughout the State in the schools. (3.) In every parish except Orleans, which is subject to special regulations because it coincides with the City of New Orleans, the State Board appoints a board of school directors, consisting of not less than five nor more than nine citizens. (4.) Lastly the board acts as a final court to settle any disputes that may arise in the school affairs of the parishes.

**193. The Parish Board.**—This body, as its name indicates, has the care of all the schools in its parish. It appoints from its own number a president to preside at its meetings, and it must elect a parish Superintendent, who is *ex-officio* secretary of the board, and who makes reports of all matters concerning the schools to the State Superintendent. To the parish board is also entrusted the task of dividing the parish into school districts, in making which the convenience of the people is consulted. These districts sometimes correspond with the boundaries of the police wards, but they may be made without reference to such boundaries. A school district may even include parts of two parishes. Lastly, the parish board receives, and apportions to each district, the school fund in proportion to the number of persons between the ages of six and eighteen (the school age); and determines the number of schools to be opened, and their location, as well as the number of teachers, their salaries, etc.

**194. Examination and Appointment of Teachers.**—The parish superintendent, with the assistance

of two competent persons appointed by the board, holds examinations for all persons seeking positions as teachers in the parish, and issues certificates to the successful applicants. Graduates of the State Normal School, however, are not required to take an examination. All teachers who obtain positions must be appointed by a committee, composed of the president of the board, the parish superintendent, and a member selected by the board.

**195. The State Superintendent.**—This officer is required to make a report every two years to the General Assembly, containing the separate reports of the parish superintendents and a summary of the amounts collected and spent for the public schools of the State, together with suggestions for the improvement of the whole system. As the executive officer of the board, his duty is to see that the school system is properly carried into effect.\* His salary is \$2,000 a year.

**196. Language.**—The Constitution provides that the general exercises of the schools shall be in the English language, but that the elementary branches may be taught in French in those parishes where the French language predominates. Most of the French-speaking parents, however, prefer that their children should study text-books written in English, and thus acquire that language.

**197. The Schools of New Orleans.**—The schools of New Orleans are managed in pretty much the same manner as the other schools of the State. The school

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\* The State Superintendent of Education is *ex-officio* a member of the boards of all institutions of learning that are under the control of the State.

board, however, is chosen in a peculiar manner. It is composed of twenty members, twelve of whom are elected by the City Council, while the remaining eight are appointed by the Governor, with the approval of the State board. The members of the city board hold office for four years, but in order that the policy of the board may not run the risk of being changed every four years, it is provided that five of the twenty must be appointed and elected annually. Thus there is never a wholly new set of members. (Compare the terms of the U. S. Senators in the Federal Constitution, Art. 1, sect. 3.) The board is authorized to appoint for "the constant supervision and periodical examination of the schools" an experienced educator to be known as Superintendent. This important officer holds examinations for teachers, makes reports both to the city and State boards, and supervises the whole system of city schools. His salary is \$2,500 a year.

**198. Summary of Public School Organization :**

A. State Board, composed partly of *ex-officio* members and partly of members appointed by the Governor.

B. State Superintendent, elected by the people, member of the Board, and its executive officer.

a. Parish Boards, appointed by the State Board.

(1.) Parish Superintendents, elected by Parish Boards.

b. New Orleans or City Board, partly elected by the Council, and partly appointed by Governor. (1.) City Superintendent, appointed by the City Board.



**199. Funds for Public Schools.**—The public schools are supported from the following sources of revenue:

(1.) The proceeds of a poll tax. This is a tax of one dollar per head (poll), levied upon every male resident of the State between the ages of twenty-one and sixty years. The proceeds are entirely devoted to the support of public schools, but they are not distributed like the proceeds of other taxes; each parish receives only as much as it has been able to collect. Under the Constitution of 1879 all male adults were required to pay this tax; but, as a general rule, it was collected only from those whose names were on the regular tax lists or who took out licenses. Hence the sums collected were much smaller than they should have been. The present Constitution, however, requires that after the State election of 1900, no person under sixty years of age who has not paid his poll tax for two years, shall be allowed to vote. This provision may be repealed or modified by the General Assembly elected in 1908.

(2.) Not less than one and one-quarter mills of the six mills tax levied and collected by the State. This is the largest source of revenue.

(3.) The proceeds of the sales of all lands or other property donated to the State for school purposes.

(4.) The proceeds of all other property, except unimproved lands, donated to the State and not designated for other purposes; and also of all estates that fall to the State in default of heirs.

(5) Except in the parish of Orleans, all fines imposed by the district courts for violation of law, and

the amounts collected on forfeited bonds, less commissions, must be paid over to the treasurers of the parishes in which they are collected and be applied to the support of public schools.

(6.) Sixteenth Sections. A special school fund is derived from the so-called "sixteenth sections," the origin of which will be explained below.

(7.) Tax on inheritances, legacies, and donations. The legislature has power to levy, solely for the support of public schools, a tax upon all inheritances, legacies, and donations; provided, that no direct inheritance, or donation, to an ascendant or descendant, below \$10,000 in amount or value shall be so taxed; provided further, that no such tax shall exceed three per cent for direct inheritances and donations to ascendants and descendants, and ten per cent for collateral inheritances, and donations to collaterals or strangers. Bequests to educational, religious, or charitable institutions are exempt from this tax. Moreover, this tax cannot be enforced when the property donated or inherited has borne its just proportion of taxes in the State prior to the time of the donation or inheritance. This is the first time in the history of Louisiana that any provision has been made for this kind of taxation.

(8.) Local Taxation. Except in the parish of Orleans, the police jurors of the different parishes, as well as the councils of cities, towns, and villages may levy for their respective schools a tax of one and one-half mills out of the ten mills tax permitted by the Constitution. Moreover, any parish, municipal corporation, ward, or school district may levy for the

support of public schools, or for building school houses, a special tax without limitation of rate, provided that the said tax shall have been submitted to a vote of the property taxpayers of the district, and a majority of the voters in numbers and in value of property voting at the election, shall have voted therefor. At such elections women who are taxpayers have the right to vote, either in person, or through their agents authorized in writing.

**200. The Revenue of the New Orleans Schools.**—A large number of the handsome school houses in the city have been built out of a donation made by a former citizen of New Orleans, John McDonogh; but this fund is devoted entirely to school buildings. The city makes such appropriations for the establishment and maintenance of the public schools as it thinks proper; but it cannot appropriate less than eight-tenths of one mill for any one year. Besides this appropriation, it receives its share of the current school fund collected by the State. Out of its funds it appropriates \$2,000 to the purchase of text-books for indigent pupils in the primary grades.

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## CHAPTER XXVI

### OTHER DIVISIONS OF THE STATE

In order to avoid confusion, it will be necessary just here to remind the reader that, besides the division into parishes, wards, school districts, and townships, which have already been described, the State is further divided into various districts for various purposes.

**201. Congressional Districts.**—These districts elect representatives to the lower house of Congress. The number of representatives to be sent by each State is fixed by Congress itself, according to the population of the State, only each State is entitled to at least one.\* The State, however, determines the boundaries of the districts. Louisiana has six congressmen and the General Assembly has divided the State into six districts. It may be added that every State sends two senators to the Federal Congress, but as these are elected by the General Assembly from any part of the State, there is no division into senatorial districts, except, as explained below, for State purposes.

**202. State Representatives Districts.**—These elect representatives to the lower house of the Gen-

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\* The ratio of representation based on the Census of 1890 is one representative for every 173,901 inhabitants. As the population of Louisiana in 1890 was 1,118,587, it will be seen that the State is entitled to six representatives.

eral Assembly. Their boundaries were fixed by the Constitution of 1898, but every ten years, after the United States census is taken, the General Assembly is required to apportion the representatives among the several parishes and election districts according to the total population. This is done by fixing a representative number, and then assigning to each district as many representatives as its whole population entitles it to, with an additional representative for any fraction exceeding one-half the representative number. The Constitution, however, places two restrictions upon the General Assembly by requiring that each parish and each ward of New Orleans, whatever its population, shall have at least one representative, and that the total number of representatives shall not exceed 116, nor fall below 98. The present number is 114.

**203. State Senatorial Districts.**—These elect Senators to the upper house of the General Assembly. Every tenth year, if a new apportionment of representatives is made, the General Assembly is required to divide the State into senatorial districts. The boundaries of the present districts, however, were fixed by the present Constitution, and have not been changed. No parish except Orleans can be divided in the formation of a senatorial district, and the total number of Senators cannot exceed 41, nor fall below 36. The present number is 39.

**204. Judicial Districts.**—These districts are laid out for the sessions of the various courts of the State. Their boundaries are fixed by the Constitution, but may be changed by the General Assembly.

**205. Levee Districts.**—As much of the alluvial

land of Louisiana is subject to overflow, a number of levee districts have been created by acts of the General Assembly. Within these districts there are boards of Levee Commissioners, appointed by the Governor, and authorized to levy a special tax upon the inhabitants for the maintenance and repair of the levees. (See under Taxation, Chap, XIII.)



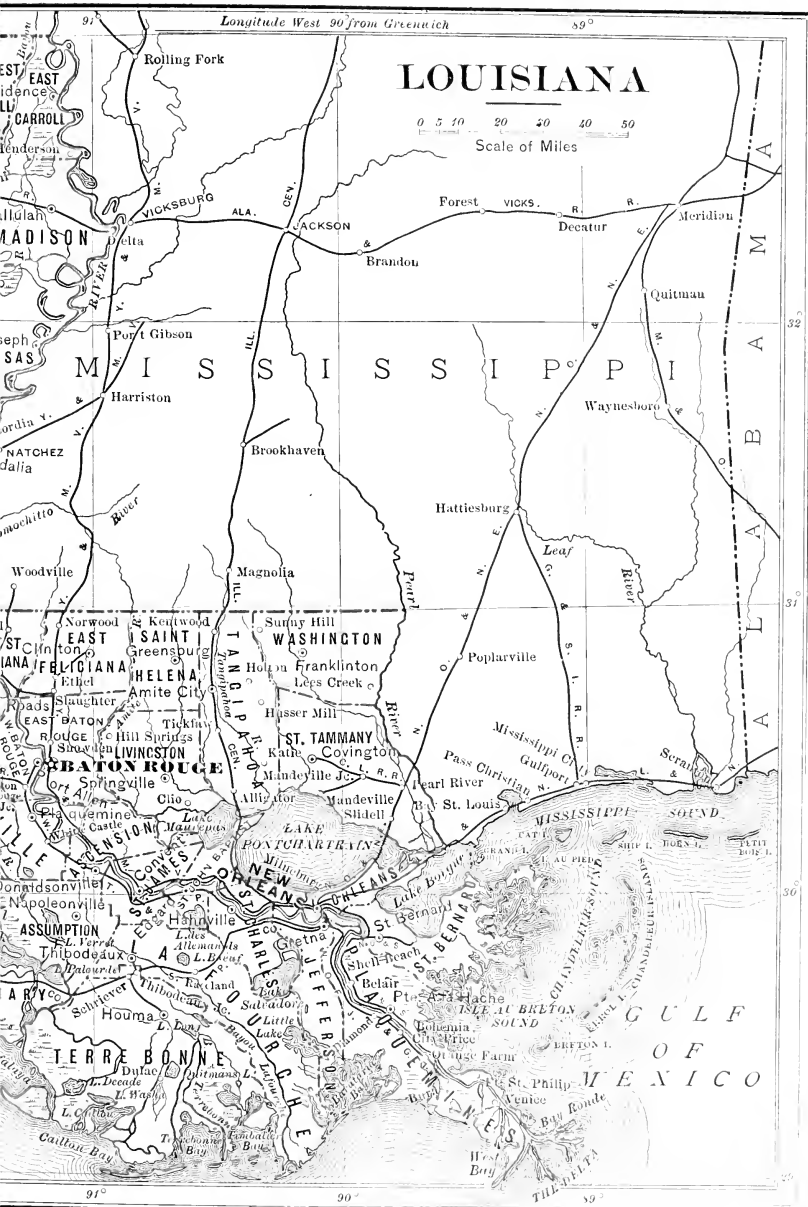


G U L F O F M E X I C O



0 5 10 20 30 40 50

Scale of Miles





## CHAPTER XXVII

### CITIES, TOWNS, AND VILLAGES

**206. Classification.**—By an Act of the General Assembly passed in 1898, municipal corporations are divided into three classes, viz., cities, towns, and villages. Those having 5,000 or more inhabitants are cities; those having less than 5,000 and more than 1,000 are towns; those having less than 1,000 and more than 250 are villages. Whenever the municipal authorities of a city, town, or village represent to the Governor of the State that the number of inhabitants has increased or diminished, and that the municipality is therefore wrongly classified, the Governor must investigate the matter, and declare by proclamation the proper classification. If the national or State census shows that the number of inhabitants in any municipality has fallen below 100, the Governor must abolish the municipality, and it can no longer exercise any corporate powers or functions.

**207. Method of Incorporation.**—No municipal corporation can be created with less than 250 inhabitants. Whenever two-thirds of the voters of any hamlet or unincorporated village present to the Governor a petition, setting forth the metes and bounds of their hamlet, stating the number of inhabitants, and praying for incorporation, the Governor must enquire into the facts. If he finds that it has a sufficient number of inhabitants, and that the petition has been properly advertised, he must declare by proclamation

that the said hamlet is incorporated as the "Village of —."

**208. Government of an Incorporated Village.—**

A hamlet seeks incorporation that it may have the privilege of suing and being sued in the courts, that it may enter into contracts like an individual, that it may hold property, and that it may govern itself through its own elected officers. When a village is first incorporated, however, the Governor appoints all the officers thereof, and they hold their offices until the next general municipal election is held, and until their successors are qualified. The officers of every municipality are the mayor, the aldermen, the marshal, the tax collector, and the street commissioner. The number of aldermen in a city must not be less than five nor more than nine; in a town there must be five, and in a village three. The mayor, the aldermen, and the marshal are elected by the people, while the other officers are elected by the board of aldermen. Any municipality may provide for the election of such other officers as the growing needs of the community may require.

**209. Powers of Mayor and Aldermen.—**The mayor and board of aldermen of every city, town, or village have the care, management, and control of their municipal corporation and its property and finances. They have power to pass ordinances that are not contrary to the laws of the State, and to alter or repeal the same. They levy and collect taxes, make regulations for the general health of the community, make needful police regulations, maintain streets, provide waterworks, erect school houses, etc.

**210. Additional Powers in Cities and Towns.**—

The mayor and aldermen of cities and towns have further powers not granted to the government of villages. They may establish and regulate hospitals, provide for the erection of lamp posts and the lighting of streets and parks, establish public libraries, maintain a regular fire department, etc. In cities and in towns of more than 2,000 inhabitants, still larger powers are granted; such as to levy license charges upon trades and professions, to establish free wharves, etc.

**211. Duties of the Mayor.**—The mayor is the executive officer of the municipality. He presides at the meetings of the aldermen, and, in case of a division, has the deciding vote. He may veto any measure, but the measure may still be adopted if two-thirds of the aldermen vote for it thereafter. He must be active and diligent in enforcing all laws and ordinances. He must also preside in a court for the trial of violations of the ordinances, and must impose fines and penalties. As soon, however, as a city contains more than 5,000 inhabitants, it elects a city judge, who takes the place of the mayor as a judicial officer, with a wider jurisdiction.

**212. Duties of Other Officers.**—The marshal is *ex-officio* constable of the municipality. He is also chief of police, and performs all other duties required of him by the ordinances. The tax-collector collects and pays over all taxes levied, and performs other duties required. The street commissioner, as his title indicates, has general control, under the direction of the mayor and aldermen, of streets, alleys, and side-

walks, and sees that they are kept in good condition. The street commissioner and clerk may be an alderman, and the clerk or marshal may be the tax-collector or assessor, if the mayor or aldermen so decide.

**213. The Act Applicable to Existing Municipalities.**—The provisions of the Act given above do not apply to cities containing more than 200,000 inhabitants (New Orleans is the only one), and they do not apply to any existing municipalities, unless it be determined by a majority vote of the electors therein, to be cast at an election held for the purpose, to come under the operation of the Act. Such an election must be held on the petition of twenty-five voters who are freeholders. If any existing municipality decides not to come under the provisions of the Act, and yet wishes to amend its charter, it may do so in the following manner. The mayor and aldermen prepare the proposed amendments in writing, and, after publishing them for three weeks, they submit them to the Governor, who submits them to the attorney-general of the State. If the latter declares that they are consistent with the laws of the State and of the United States, and if there be no protest against the amendments by one-tenth of the electors in the municipality, the Governor approves the amendments, and, when recorded, they have the effect of law. It is to be noted that if a municipal corporation has not less than 2,500 inhabitants, its charter may be granted, renewed, or amended by a special act of the General Assembly. As New Orleans is the largest city in the State and its government has some peculiar features, it will be well to consider it separately.

## CHAPTER XXVIII

### THE CITY OF NEW ORLEANS

**214.** Area of the City.—The corporate limits of the city embrace the original parish of Orleans and a portion of Jefferson parish, which portion is now a part of Orleans. These boundaries enclose an area of nearly 199 square miles, though the inhabited portion of the city is only 37 square miles.

**215.** The New Charter.—In 1896 New Orleans, dissatisfied with its existing charter, submitted a new charter for the approval of the General Assembly. As soon as this charter was granted, it was put in force as far as possible, and it promises to be entirely satisfactory to a majority of the inhabitants. As the city has more than a quarter of a million inhabitants, it requires far more officials than the mayor and aldermen that every small town or city, when it is incorporated, is required to elect. In fact the government of a great city like New Orleans is so complex that to be well understood its charter has to be carefully studied. Only the leading features of the charter can be given here.

**216.** Municipal Districts, etc. — The city is divided into seven municipal districts, which in turn are subdivided into seventeen wards. To each of these districts a certain number of representatives in the City Council is assigned, and these are elected in some cases from the wards composing the districts, and in other cases from the districts at large. This

lack of uniformity is due to various amendments to the charter that were made in the General Assembly. It will doubtless be corrected in the near future.

**217. The Council, or Legislative Department.**—This body, unlike the General Assembly, consists of only one chamber. The number of members from each district is fixed by the charter, the whole number being seventeen. Like the other city officials they are chosen for four years. As soon as they are elected, they meet and elect by ballot a president, who administers the oath of office to the new mayor.

**218. Salaries.**—It is customary in most cities of the Union for councilmen to serve without salary, and this was formerly the custom in New Orleans. The new charter, however, provides that every councilman shall receive \$20 for attendance at each monthly meeting, if he has also attended the called or special meetings of the same month. The intention of this provision is not so much to reward the councilmen in proportion to their services as to offer a premium for regular attendance. The president of the council, however, receives a salary of \$2,000 a year.

**219. Powers and Duties of the Council.**—The most important of these are : (1) to preserve the peace and good order of the city ; (2) to maintain its cleanliness and health by providing a proper system of drainage, etc. ; (3) to prevent the sale of adulterated or decayed food ; (4) to keep bridges and streets in repair ; (5) to organize and maintain public schools ; and (6) to exercise a general police power. The council must sit with open doors that the public may attend and listen to its deliberations.



**220. Executive Department.** — The executive powers are vested in a mayor, a comptroller, a treasurer, a commissioner of public works, a commissioner of police and public buildings, and a city engineer. The three first are elected by the people for four years; but the others are appointed by the mayor with the consent of the council. It will be seen that a large appointive power is granted to the mayor, who is held responsible for the efficiency of his appointees. In this particular the charter of New Orleans is in accord with other charters that have been recently made for large cities. It is generally believed that if a good man is chosen as mayor, it is safe and wise to trust him with the appointment of the heads of departments. Two exceptions, however, to this appointive power are very generally made. As the treasurer has the keeping of the city's money, and as the comptroller signs the warrants on which this money is paid out, these officers are elected by the people, who like to hold those that handle their money responsible to them.

**221. The Mayor.**—The Mayor is the chief executive officer of the city. He occupies very nearly the same position in the city as the Governor in the State. It is his duty to see that all the laws and ordinances of New Orleans are executed and enforced. He must also sign all contracts entered into by the city. As the Governor is commander in chief of the State militia, so the Mayor is commander in chief of the police force of the city. All ordinances and resolutions passed by the Council must be submitted to the Mayor for his consideration. If he signs them, they become law.

If he disapproves of them, he must return them within five days to the Council with his written objections. To become law the said ordinances, when thus vetoed, must be repassed by two-thirds of the Council elected. This is called "passing over the veto." If the Mayor fails to return an ordinance with his objections in five days, this failure has the force of a veto. The salary of the Mayor is \$6,000 a year.

**222. The Granting of Franchises.**—Ordinances granting franchises, such as the privilege of operating a street railway, etc., are regarded as so important that they are passed in a different manner from other ordinances. When such an ordinance has been passed by the Council, it must be sent to the Mayor, who calls together the other members of the Executive Department to consider it with him. They, or any four of them, may approve, amend, or reject the ordinance. If they amend, the amendments must be accepted by a majority of the Council before the ordinance is finally sent to the Mayor for his veto or approval.

**223. The Treasurer and the Comptroller.**—The duties of these officials have been mentioned above. The treasurer has the care of all the moneys of the Corporation, which he pays out on the warrants of the comptroller and the Mayor. The comptroller has general superintendence of the finances of the city, and twice a year he must lay before the Council and the Mayor a full report of its financial affairs. The duties of the other members of the Executive Department are sufficiently indicated in their titles.

**224. Board of Civil Service Commissioners.**—

Some of the large cities have found it wise to introduce into their charters provisions for the appointment of a board of civil service commissioners. The duty of such a board is to subject applicants for the minor offices and places in the government of the city to an examination. This method of selecting officials destroys the old system of patronage under which the heads of departments rewarded their friends by giving them lucrative positions in the city government. By a good civil service system only the worthiest and best qualified persons can obtain positions. It insures the best possible service to the government, for it rewards merit instead of political service. By the charter of 1896 such a board was created for the first time in the history of the city. After it had served for four years, an act of the Legislature was passed making provision for a new board and effecting important changes in the whole system.

*Appointment and Duties.*—As at present constituted, the board consists of the mayor, the treasurer; and the comptroller, and two citizens to be appointed by the mayor, by and with the advice and consent of the council. These appointees, however, hold office only during the term of the appointing powers. The board is required to classify all offices and places except such as are exempt by law, and no appointment is to be made to these offices and places except in accordance with the rules of the civil service. Within thirty days after the beginning of each municipal administration, a general examination is held by the board, or by such examiners as it may appoint, for all applicants for positions in the classi-

fied service, and all persons holding or desiring to hold positions in the service are obliged to undergo the same. From the lists of successful candidates, appointments are made by the heads of departments ; but no appointee holds his position beyond the expiration of the term of the appointing officer, except the appointees of the board of police commissioners, the board of fire commissioners, and the sewerage and water board, whose tenure of office is during good behavior. Besides the general examination every four years, special examinations are held as they are found necessary for those who seek promotion from rank to rank, etc. The new law makes a number of exemptions from the civil service rules which did not exist under the old law. These exemptions are as follows : (1) chief clerks, secretaries, cashiers, receivers of public money, and stenographers ; (2) attorneys, civil engineers, surveyors, city physician, city chemists, superintendent of the city fire alarm, and the city electrician, and the captain of the police jail ; (3) the officers of the city council ; (4) street laborers, street bridge carpenters, drivers, watchmen, porters, and janitors, except as to physical abilities to perform their duties ; (5) all Confederate veterans with a good record.

**225. Board of Fire Commissioners.**—This board consists of nine members, elected one from each municipal district and two from the city at large. The board appoints a chief engineer, and, under the civil service rules, holds its own examinations for other officials.

**226. Board of Police Commissioners.**—This

board consists of seven members, elected by the council for twelve years, two going out every four years. The mayor and the commissioner of public works are *ex-officio* members. The mayor is the presiding officer, though a president *pro tempore* is always elected to take his place when he cannot attend. The board appoints a superintendent of police, and has general control of the police force, but all other appointments and promotions are subject to civil service rules. The members of the board receive no salary. [*Recorders' Courts.* See Chapter X under Courts.]

**227.** Sewerage and Water Board.—The city having been authorized to issue bonds for the important work of sewerage and drainage, a board has been established for constructing, controlling, maintaining, and operating the public water system and sewerage system. It is composed of the members of the drainage commission, as now constituted, together with a citizen property taxpayer in each of the seven municipal districts of New Orleans, to be appointed by the Mayor, with the consent of the council, for twelve years. The appointment of this board marks a new era in the history of the city.

**228.** Taxation.—Once in every twelve months the City Council must make out a detailed estimate exhibiting the various items of liability and expenditure, including the requisite amount for all city expenses during the year, and must levy such taxes as may be necessary to meet these liabilities and expenditures. Besides these taxes an annual license is imposed on certain occupations and professions.

The property of the city is also taxed by the State for its own expenses. It must be added that the city has not an unlimited power of taxing itself. Taxation is controlled by the General Assembly under certain conditions imposed by the constitution. All this we shall see more clearly when we consider the subject of State taxation. As New Orleans has a large debt, amounting to many millions of dollars, its rate of taxation is high. It levies 2.2 per cent—one per cent for actual expenses, one per cent for the city debt, and two mills for drainage, etc. The State adds six mills, making 2.8 per cent on the dollar. As there is a levee tax of seven-tenths of a mill, the total rate is 2.87 per cent.

**229.** Other Appointees of the Mayor.—Besides the heads of departments already mentioned, the mayor appoints, with the consent of the council, a city attorney and a city notary. The attorney is the legal adviser of the city, and represents it in all suits in which it may have an interest. He holds office for six years and receives a salary of \$6,000 a year. The city notary prepares all contracts, acts of purchase or sale, etc., to which the city is a party. The notary, the attorney, and all other appointees of the mayor are removable by him at his pleasure.

**230.** Date of Elections.—In order to separate city affairs as far as possible from State affairs, and thus exclude party government from the former, it has become customary in many large cities to hold the city elections on a different day from that of State elections. It is easier under these circumstances to elect as mayor, etc., the best men, whether they be

republicans or democrats; for the citizens will be more likely to vote without reference to party lines. A city is now rightly regarded as a large business corporation which should be taken out of politics and managed on business principles. Fortunately, the present constitution recognizes the importance of such a regulation, and provides that in New Orleans the elections for parish and city offices shall always be held on the same day, but that they shall always be on a day separate and apart from the general election for State officers. The city elections are now held on the Tuesday following the first Monday of November, though the General Assembly has power to change this date.

**231. Impeachment and Removal.**—The mayor and other officers of the executive department may be impeached and removed for malfeasance in office, gross neglect of duty, or unfitness. A standing committee of the council, consisting of five members (called the Committee of Public Order), must conduct the impeachment proceedings. The council, except these five members, sits as a court to try such cases, and no person can be convicted without a vote of at least ten members of the council. When the mayor is on trial, the president of the council presides.

**232. Punishment.**—If an officer is convicted, he may be removed from office and declared incapable of holding any office under the city charter. He is still liable, however, to indictment, trial, and imprisonment according to law for the offence he has committed. In addition to removal by way of impeachment, the council may, by a vote of two-thirds of its members, remove from office any official elected by the council.

**233. Government of Other Cities.**—From the outline given above it will be clear that the government of New Orleans includes many departments and is quite complex. There are no other large cities in the State, but there are two that contain more than 10,000 inhabitants, *i.e.*, Shreveport and Baton Rouge. These cities received their charters from the General Assembly. The details of these charters cannot be given here, but it may be noted that they contain provision for a much simpler form of government than that of New Orleans. Neither of them gives the mayor the privilege of appointing heads of departments, and neither provides for a Civil Service Commission. These provisions are the outcome of recent ideas concerning city government and apply more particularly to large cities.



## CHAPTER XXIX

### THE BILL OF RIGHTS

Now that we have examined the various forms of local government, it will not be very difficult to understand the working of the State government, which has control of the matters that belong to all the citizens alike. The State government is created by the constitution or fundamental law, to which reference has already been so frequently made. Hence if we would understand what form of general State government we have in Louisiana, we must continue to study the constitution of the State.

**234.** Origin of the Bill of Rights.—The bill of rights, commonly placed at the beginning of a State constitution, is intended to secure what are called the civil rights of the citizens; that is, the protection of person and property, as well as the privilege of pursuing whatever trade or calling one sees fit to follow.\* The Bill of Rights in the Constitution of Louisiana is for the most part modeled after the Federal Bill of Rights contained in the first ten amendments to the constitution of the United States. These amendments, though borrowed from the constitutions of the original thirteen States, can be traced back to some articles of the famous Bill of Rights by which, in 1689, constitutional government was established in England. Thus if we compare the Louisiana docu-

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\* See Hinsdale's *American Government*, p. 21.

ment with the English original, we shall find that some important maxims of individual liberty are laid down by both in almost the same words.\*

**235. Articles of the Louisiana Bill of Rights.**

**Article I.**—The first article declares that all government originates with the people, is founded on their will, and is instituted solely for their welfare. Its proper function is to secure justice to all, preserve peace, and to promote the interest and happiness of the people. This article is founded on the second clause of the Declaration of Independence. It expresses the modern idea that the government exists for the people and not the people for the government. The acts of many sovereigns in ancient times, and of some in modern times, have shown that they believed the people existed only for the benefit of the government. The Declaration of Independence was a protest against this idea.

**236. Article II.**—This article provides that no person shall be deprived of life, liberty, or property, except by due process of law. The exact words of the article are to be found in the fifth Amendment to the Federal Constitution, but there they are intended only to protect the individual against the arbitrary action of the Federal Government. Here the same protection is guaranteed against the State authorities.

**237. Articles III., IV., and V.**—These articles provide that no State law shall be passed restraining liberty of speech or of the press; that there shall be no established religion; and that the people may always assemble peaceably to petition the State gov-

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\* It will be instructive for the student to make this comparison.

ernment for a redress of grievances. The articles are copied from the first Amendment to the Federal Constitution, which applies only to laws passed by Congress. It must be noted, however, that freedom of speech and of the press does not permit persons to say at all times exactly what they think. Everybody, for instance, is liable to a suit for libel in case he is guilty of malicious utterances. Liberty must not run into license.

**238.** Article VI.—This article simply provides that all State courts shall be open, and that for those who have received any injuries to their rights there shall be no denial of justice or unreasonable delays. A similar provision is to be found in the English Magna Carta.

**239.** Article VII.—This article declares the right of the people to be secure in their persons, houses, and effects against unreasonable searches by the officers of the Government. Search warrants must be issued only upon probable cause and with full description of the place to be searched and the persons or things to be seized. This article, borrowed *verbatim* from the fourth Amendment to the Federal Constitution, is a protest against such search warrants as were issued to oppress the American colonists just before the Revolution. In the Federal Constitution it applies only to warrants issued by the United States courts; here it is applicable to the State courts and officers.

**240.** Article VIII.—This article declares that a well regulated militia being necessary to the security of the State, the right of the people to keep and bear arms shall not be taken away, but that laws may be

passed to punish those who carry weapons concealed. The first part of this article is the same as the second Amendment to the Federal Constitution. It secures the militia against adverse State laws, and protects the individual citizen in the right to keep and bear arms.

**241. Article IX.**—This article contains several important provisions for the protection of the rights of persons accused of crimes.

(1.) In all criminal prosecutions the accused shall have the right to a speedy trial by an impartial jury; provided that cases in which the penalty is not necessarily imprisonment at hard labor, or death, shall be tried by the court without a jury, or by a jury less than twelve in number. Under the head of Judiciary Department special provision is made that all cases in which the punishment may not be at hard labor shall, until otherwise provided by law, which shall not be prior to 1904, be tried by the judge without a jury. Cases in which the punishment may be at hard labor shall be tried by a jury of five, all of whom must concur to render a verdict; cases in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom concurring may render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict. It is expected that this provision will facilitate the work of the courts by lessening the number of mistrials which are likely to occur when the agreement of twelve jurors is necessary for conviction.

(2.) The accused shall have a right to be confronted with the witnesses against him; he shall have the right to obtain the assistance of counsel and to com-

pel the presence of witnesses in his behalf. While the legislature may provide for the prosecution of misdemeanors, no person can be held to answer for a capital crime unless on an indictment or presentment by a grand jury. This, however, does not apply to the members of the militia when in active service in time of war or public danger; for at such times they are subject to the severer regulations of military tribunals.

(3.) No person shall be twice put in danger of life or liberty for the same offence, except on his own application for a new trial, or where there is a mistrial, or a motion in arrest of judgment is sustained. A mistrial arises when a jury cannot agree upon the guilt or innocence of the accused; or when by sickness of a judge, a juror, or the accused, a trial cannot be completed. An arrest of judgment is the staying of a verdict after conviction on the ground that it would be erroneous. With some important changes Article IX. is borrowed from the fifth Amendment to the Federal Constitution, which applies only to cases in which the laws of the United States have been violated.

**242.** Articles X. and XI.—In all criminal prosecutions the accused shall be informed of the nature and cause of the accusation against him; and when tried by jury shall have the right to challenge jurors, the number of challenges being fixed by law. No person shall be compelled to give evidence against himself in a criminal case, or in any proceeding that may subject him to criminal prosecution. Similar provisions applying to the United States courts are found in the Federal Constitution. In old times accused persons were compelled by torture or otherwise to incriminate

themselves, but fortunately such evil customs have passed away in civilized countries. In regard, however, to testifying against oneself, the State Constitution (Art. 216) makes one exception, by declaring that any person may be compelled to testify in trials of contested elections, in proceedings for investigation of elections, and in all criminal trials under election laws, and shall not be permitted to withhold his testimony on the ground that it may criminate him or subject him to public infamy. Compulsion can be exercised only through imprisonment, and his testimony cannot be used against him in judicial proceedings, except for perjury in giving such testimony.

**243.** Article XII.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. All persons shall be bailable, except for capital offences where the proof of guilt seems evident, and except where the accused has been convicted of some crime punishable with death or hard labor. The first part of this provision, which is to be found not only in the Federal Constitution, but also in the Bill of Rights, was originally framed in England to protect individual liberty against the arbitrary action of the king.

**244.** Article XIII.—This article provides that the famous safeguard of individual liberty, the Writ of Habeas Corpus, shall never be suspended by the authorities of the State except in cases of rebellion or invasion when the public safety may require its suspension. The object of a writ of Habeas Corpus is to prevent any person from being kept in jail or otherwise deprived of his liberty, except upon an affidavit,

indictment, or information, charging him with crime. By means of such a writ, which may always be obtained from the proper judge, a jailer may be compelled to produce his prisoner in court and show by what authority he is confined. It is a security against unlawful imprisonment. The writ of Habeas Corpus is found far back in English history, but it was not formulated till 1679, in the reign of Charles II. The right to it will be found inserted in Art. I, sect. 9 of our Federal Constitution. During the Civil War the President of the United States in several instances suspended the writ of Habeas Corpus and established martial law or military government. Congress, to which such action legally belonged, upheld the President on the ground that a serious rebellion against the Government was then in progress. In Louisiana, even during the most trying times, the State authorities have never suspended the writ of Habeas Corpus. In 1806, when there was much excitement in New Orleans over the so-called Burr Conspiracy, Governor Claiborne recommended to the Territorial Assembly the suspension of the writ, but that body refused to adopt his suggestion. General Wilkinson, the commander of the United States troops, then established martial law in New Orleans on his own responsibility ; but when the United States courts issued writs of Habeas Corpus, Wilkinson thought it wise to give up some prisoners that he had arrested. Again in 1814 Governor Claiborne urged the General Assembly of the State to suspend the writ because General Jackson wished to incarcerate persons suspected of favoring the British. As before, however, the legislature declared

that the step was unnecessary. Accordingly, General Jackson, following the example of Wilkinson, placed New Orleans under martial law, and exercised the powers of a dictator until he brought himself in conflict with a United States court by disregarding a writ of Habeas Corpus. It will be remembered that he was afterwards fined in the same court \$1,000 for having made an arbitrary and unnecessary use of martial law.

**245. Article XIV.**—This article declares that the State militia shall be in subordination to the civil authorities. As has been stated before, the Governor is the commander-in-chief of the militia, and Article 301 of the Constitution further declares that he shall have power to call it into active service for the preservation of law and order or when the public service may require it.

**246. Article XV.**—The last article of the Bill of Rights is similar to the IXth Amendment to the Federal Constitution. It provides that the foregoing enumeration of rights shall not be understood as denying or impairing other rights of the people not herein expressed. It is intended to guard against the supposition that because certain rights are herein clearly expressed, the people of the State possess no others. The people possess all rights that they have not expressly renounced. Of course it is implied here that, in order to enjoy his rights, the citizen must conduct himself as the laws of the State require. If he violates the laws, he may be deprived of his liberty and even of his life. The Bill of Rights simply provides that he shall not be so deprived without due process of law.



## CHAPTER XXX

### THE GENERAL ASSEMBLY

**247.** Distribution of Powers.—As is the case in the Federal Constitution, the powers of the State government are distributed among three departments. These are the legislative, which makes the laws ; the judicial, which interprets or determines the meaning of the laws ;\* and the executive, which executes them. It has always been found wise to keep these various departments as far as possible separate and distinct, so that each may exercise its functions without interference on the part of the others. The making of laws is so important a function that the legislative department is rightly regarded as the most important department of government. As we shall see, however, hasty or unwise legislation may be held within reasonable bounds by means of the Governor's veto ; while the Supreme Court, besides its other functions, may nullify any act of the legislative department which conflicts with the Constitution of the State or of the United States.

**248.** Composition of Legislative Department.—This department is composed of two bodies, the House of Representatives and the Senate, which together are called the General Assembly. The object of having two bodies is that one may serve as a check upon the other.

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\* It is well to note, however, that the judiciary never interprets the law except in its application to a suit actually brought in the court.

**249. Apportionment.**—Under Divisions of the State we have already seen how the State is divided into representative and senatorial districts, and how the apportionment of members is made to these two kinds of districts.

**250. Time and Place of Meeting.**—The General Assembly meets at Baton Rouge every second year on the second Monday in May. As Representatives and Senators are elected for four years, they attend two sessions. A session is limited to sixty days. The Governor, however, may call an extra or special session limited to thirty days.

**251. Qualifications.**—Every Representative must be twenty-one years of age and every Senator twenty-five. Both must have been citizens of the State for five years and actual residents of their districts for two years preceding their election.

**252. Rules.**—Each house is a judge of the facts in regard to the election of its own members. Each house also makes rules for its own government, punishes its members for disorderly conduct, and, by a vote of two-thirds of the members elected, it may even expel one of its number.

**253. Salary and Privileges.**—The members of both houses receive their traveling expenses and \$5 a day during their attendance upon the session. They are privileged from arrest during their attendance and their journey to and fro, except for treason, felony, and breach of the peace. They must not be held to account for any speech made in either house. This last provision ensures freedom of debate. In England in former times the king would sometimes

punish members of Parliament for speeches made in that body.

**254.** The Passing of Laws.—Only the leading provisions can be given here:

(1.) Every law passed must embrace only one object, which must be expressed in its title. The object of this regulation is clear.

(2.) Bills may originate in either house, except bills for raising revenue or appropriating money. These latter must always originate in the House of Representatives, though the Senate may propose or concur in amendments as in other bills.

To confine the origin of such bills to the lower House is the rule both in England and in America. It arose from the fact that the House of Lords and the Federal Senate are not elected by the people, and it is a recognized principle of government that no money shall be taken from the people except through their direct representatives. As the State Senators, however, are elected by the people from larger districts, but in the same manner as the Representatives, there seems no good reason for this regulation in State Constitutions, unless it be urged that the people are more fairly represented in the more numerous branch of the General Assembly.

(3.) Every bill must be read on three different days in each house, and before it is voted on, it must have been reported on by one of the standing committees to which all bills are referred. If a bill fails to get a majority of the votes in either house, it is dropped.

(4.) The Lieutenant-Governor is *ex-officio* president.

of the Senate and has a casting vote (in case of a tie), but the Senate also elects one of its members a temporary president to serve in the absence of the Lieutenant-Governor. The House of Representatives elects one of its own members as presiding officer, who is known as the Speaker. When a bill has passed both houses, it must be signed by the two presiding officers and taken immediately to the Governor. His duties will be discussed under the Executive Department.

### **255. Prohibitions Laid on the General Assembly.**

—It was formerly customary, when constitutions were framed, not to limit the powers of the General Assemblies in the making of laws. There was so much abuse of these powers, however, especially during the period of "Reconstruction" \* that all recent Constitutions in the South show a wholesome fear of too much legislation, and we find in them a long list of restrictions upon the legislative department; that is, a list of subjects with which the General Assembly is forbidden to meddle. It is true that we find many of these forbidden subjects provided for in the Constitutions themselves, and in such cases it was doubtless the intention to prevent those changes of the law which naturally result from a succession of legislatures. At all events the result, as was said above, has been to make the recent Constitutions very long documents, full of special laws formerly left to the discretion of the General Assembly, and to make the members of that body feel that but little confidence is placed in their wisdom. There has been much discussion as to whether the old or the recent system is the better.

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\* See Part I. of this Volume.

The weight of authority seems in favor of the recent one.

**256. Prohibitions Enumerated.**—Only a few of the restrictions laid upon the General Assembly by the Constitution of 1898 need be mentioned:

1. The two most important of these refer to the expenditure of money and the contraction of debts. (a) The General Assembly shall have no power to draw any money from the treasury except by a particular or specific appropriation, nor shall any appropriation be made for a longer period than two years. The first clause enables the people to know exactly for what purposes their money is being spent, and the second is intended to limit the power to appropriate money that has not yet come into the treasury. (b) The General Assembly shall have no power to contract or to authorize the contraction of any debt on behalf of the State, or to issue bonds except to repel invasion or to suppress insurrection. This provision was introduced for fear that some unwise Assembly might still further increase the debt of the State and lay an additional burden upon the tax-payers.

2. The General Assembly is forbidden to pass any local or special law on a number of subjects which are very carefully enumerated. The principal ones are: (1) the regulation of labor, trade, manufacturing, or agriculture; (2) the granting of divorces; (3) the opening or conducting of elections; (4) the creation of corporations or the amending of their charters, but this provision does not apply to large towns or to the organization of levee districts or of parishes; (5) the exemption of property from taxation; (6) the fixing of

the rate of interest; (7) the management of public schools, or the building of school houses or the raising of money for such purposes. Upon the subjects thus enumerated only general laws or laws affecting the whole State may be enacted. Upon subjects not enumerated, special laws may be passed, provided that notice thereof has been published for thirty days in the district concerned.

3. It is specially provided that no money shall be appropriated to any churches, sects, or denominations of religion, or to any charitable institutions, except to certain charitable institutions of the State. (See under State Institutions.) The first part of this article, together with Article IV. of the Bill of Rights, provides for the complete separation of church and state. All churches must be supported by private contributions.

4. Lastly, the General Assembly is forbidden to pass any law by which the State shall subscribe to or purchase the stock or capital of any corporation, or become a part owner in any kind of corporation or private enterprise. This is regarded as a wise provision to prevent the State from pledging its name in support of any corporations or becoming a speculator in the stock of business enterprises. Before 1845 and during the Reconstruction Period, the reader of Part I. of this volume will remember, Louisiana incurred heavy liabilities by pursuing an opposite course.

The restrictions thus placed upon the General Assembly show what important powers that body could exercise if left entirely free.

## CHAPTER XXXI

### THE EXECUTIVE DEPARTMENT

#### **257.** Composition of Executive Department.—

The Federal Constitution vests the executive power of the United States in the President, who appoints all the Cabinet officers, or heads in the Executive Departments, and thus exercises control over them. The Constitution of Louisiana, however, makes the Executive Department consist of the Governor, the Lieutenant-Governor, the Auditor, the Treasurer, and the Secretary of State. As each of these is elected by the people and there is no responsibility to the Governor, the latter official does not occupy so important a position in the Executive Department as the President. Nevertheless, though the Governor does not control the actions of the other members of the Department, his powers are so much greater than theirs that he easily stands out as the most prominent figure in the State government. He is vested by the Constitution with the supreme executive power. It is very necessary, therefore, that he should be a man of fine judgment and sterling honesty. He should have the interests of his State thoroughly at heart, and should be fearless in the discharge of his duties.

**258.** Election of Governor and Lieutenant-Governor.—The qualified electors of representatives to the General Assembly vote at the same time for a Governor and a Lieutenant-Governor. The returns for

these officers must be sealed up separately by the proper officers of each parish, and sent to the Secretary of State. He delivers the sealed returns to the new General Assembly meeting in joint session, who examine and count the votes. The person receiving the greatest number of votes for Governor is declared elected; but in case two or more persons shall be equal and highest in the number of votes cast, one of them is immediately chosen Governor by the joint vote of the members. The Lieutenant-Governor is to be chosen in exactly the same manner. Both officers serve for four years. The Lieutenant-Governor may succeed himself immediately; but the Governor may succeed himself only at the expiration of one or more terms after the term for which he has served. The salary of the Governor is \$5,000 a year. The salary of the Lieutenant-Governor is given below.

**259. Qualifications.**—Candidates for Governor and Lieutenant-Governor must have the following qualifications: (1) They must be thirty years of age, (2) must have been ten years citizens of the United States and for the same space of time residents of the State, and (3) must not have held any office under the United States government within six months of their election.

The powers and duties of the Governor will now be enumerated.

**260. Pardons and Commutations.**—The Governor has power to grant reprieves for all offences against the State; that is, he may delay the execution of all sentences. Except in cases of impeachment or treason, he may, upon recommendation of the Board of Pardons (composed of the Lieutenant-Governor,



the Attorney-General, and the Judge of the Court before which conviction was had) or any two of them, grant pardons, commute sentences, or release convicted persons from fines and forfeitures. While he may grant reprieves to persons convicted of treason until the end of the next session of the General Assembly, that body alone has the power of pardoning treason. In cases of impeachment,\* there is no pardoning power. Hence a person, convicted of treason by a jury in a criminal court, could be pardoned, but, if convicted by impeachment before the Senate, could not be pardoned. To commute a sentence is to change it to a milder one. Treason consists in levying war against the government of the State or giving aid or comfort to its enemies.†

**261. Appointing Power.**—In the appointment of public officials the power vested in the Governor is very important. He nominates, and by the advice and with the consent of the Senate, appoints, all officers whose offices are created by the Constitution and whose appointment or election is not otherwise provided for. Among his appointees are the Justices of the Supreme Court, and a large number of lesser officials. By the Constitution of 1852 the Justices of the Supreme Court were elected by the people, but in more recent Constitutions provision is made for their appointment by the Governor. This provision is doubtless imitated from the Federal Constitution, which requires the President to appoint the Justices of the Supreme Federal Court. Of course there is a

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\* For explanation of impeachment see page 244.

† For further account of Treason see Chapter XXXVIII.

check upon the Governor in that his nominations must be accepted by the Senate, but generally no difficulty is raised by this body.

**262. The Militia.**—The Governor is commander-in-chief of the militia of the State, except when it is called by the President into the actual service of the United States.

**263. Messages.**—The Governor must send messages from time to time to the General Assembly concerning the affairs of the State, and recommend measures to their consideration. His messages, however, have no binding force upon the action of the General Assembly. He may also call this body to meet in a special session whenever any extraordinary occasion arises.

**264. Veto Power.**—When a bill has passed both Houses and been signed by the Governor, it becomes a law. If, however, he vetoes it, he must return it with his objections to the house in which it originated. It may then be passed by a two-thirds vote of the members elected to each house and become a law without his signature. If the Governor keeps a bill five days while the General Assembly is still in session, it becomes a law just as if he had signed it. If the General Assembly, however, has adjourned in the meantime, it does not become a law. When the Governor by retaining a bill, prevents its becoming a law, he is said to use his "pocket veto." (Note the difference between the "pocket veto" of the Governor and that of the Mayor of New Orleans.) It has often been remarked that when the Governor signs or vetoes a bill he virtually becomes a third house of legislation;

for, in one case, he helps to make a law, and in the other, he defeats a bill which cannot obtain a two-thirds majority. Thus far, therefore, the Executive Department is not kept distinct from the Legislative. The veto power has often been wisely used to prevent hasty legislation. It is a powerful check upon the General Assembly. The same power is possessed by the President of the United States, and by the Governors of all the States except three (Rhode Island, North Carolina, and Ohio).

All orders, votes, and resolutions to which the concurrence of both Houses is necessary must be signed or vetoed by the Governor as in the case of bills. An exception, however, is made in favor of an address for removal from office, a vote taken on a question of adjournment, and other minor questions.

An excellent provision in the Constitution of Louisiana is that the Governor may approve particular items in a bill appropriating money and veto others. The vetoed items, to become law, must be repassed by two-thirds of the members elected. If this provision did not exist, the Governor would be compelled to veto a whole bill in order to defeat a single improper item, as is the case with the President of the United States.

**265. Duties of the Lieutenant-Governor.**—(1) The Lieutenant-Governor, by virtue of his office, is president of the Senate, but he has only a casting vote therein. Whenever he uses this voting power, he virtually becomes a member of the Senate.\* (2) In case

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\* When a bill has not received a majority, it is already lost; so that in case of a tie, it is not necessary for the president of the Senate to vote against a bill.

of the disability of the Governor to perform the duties of his office, his place is taken till the end of the term by the Lieutenant-Governor, and the president *pro tempore* of the Senate becomes Lieutenant-Governor.

(3) The Lieutenant-Governor is a member of the Board of Pardons. His salary is \$1,500 per annum; when he acts as Governor, he receives the salary of that official.

**266.** Other Officials of the Executive Department.—The Treasurer, the Auditor, the Attorney-General, and the Secretary of State are elected for the same term as the Governor, and in case the office of any one of them is made vacant by death or otherwise, the Governor, with the advice and consent of the Senate, fills the vacancy until the next election.

(1.) *Secretary of State*.—The Secretary of State is custodian of the public archives and of the Seal of State. In his office are preserved the originals of all laws passed by the General Assembly, and it is his duty to make public official copies of these laws. He is required to compile the reports of the various departments of the State and to publish them. He is also the official Librarian of the State. As we shall see later, he furnishes the official ballots and receives the returns of all elections. His salary is \$1,800. The Secretary of State has authority to appoint an assistant, who is known as the Assistant Secretary of State. Whenever the Secretary is prevented by any cause from performing his duties, or whenever he chooses so to order, the Assistant Secretary has authority to perform all the duties of the office. He is removable at the pleasure of the Secretary, and his salary is paid out of

the appropriation for the clerical expenses of the office of Secretary of State.

(2.) *Treasurer.* This officer has the care of all the moneys of the State. He is required to give bond for the faithful discharge of his duties. His books must be open to inspection whenever the Governor or a committee of the General Assembly may wish to examine them. He is not eligible as his own immediate successor. His salary is \$2,000 per annum.

(3.) *Auditor of Public Accounts.*—This officer, as his title indicates, is the official bookkeeper of the State. Among his manifold duties he is required at each regular session of the General Assembly, to present a full statement of the revenues of the State, with such plans as he may deem expedient for the support of the public credit, for lessening the public expenses, etc. He keeps an account between the State and the Treasurer, and reports to the Governor quarterly the amount of money in the hands of the Treasurer belonging to the State. Like the Treasurer, he gives bond for the faithful discharge of his duties. His salary is \$2,500.

(4.) *Attorney-General.*—For the duties of this officer, see under Judiciary Department, Chapter XXXII.

**267.** *Succession of the Office of Governor.*—In the event of the removal, impeachment, death, resignation, disability, or refusal to qualify of both Governor and Lieutenant-Governor, the President *pro tempore* of the Senate acts as Governor until the disability be removed or for the rest of the term. If no President of the Senate has been chosen, or if he is prevented from acting by removal, death, resignation,

permanent disability, or refusal to qualify, his place is taken by the Secretary of State. Thus ample provision is made to prevent the office of Governor from lapsing. It will be instructive to compare this provision with the one made by Congress for the succession to the Presidency, and to note the reason for the difference.\*

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\* See Hinsdale's *The American Government*.

## CHAPTER XXXII

### THE JUDICIARY DEPARTMENT\*

**268. Functions. Division of Courts.**—When it is remembered that to the judiciary department is given the power to interpret the meaning of the laws, and to decide whether they are in accord with the Constitution, the great importance of this department will be clearly seen. By such interpretation juries are greatly influenced and the course of justice is affected. Without an able and pure judiciary no State can hope to enjoy real prosperity. As the work to be done by the courts is great and of various kinds, the Constitution of Louisiana provides an elaborate system of judicature. It declares that the judicial power shall be vested in a supreme court, in courts of appeal, in district courts, and in courts of the justices of the peace. There are in addition, as we shall see, four city courts in the parish of Orleans.

We shall first describe the New Orleans system of courts, taking the lower courts first. In New Orleans there are four kinds of courts—recorders' courts, city courts, district courts, and a court of appeal.

**269. Recorders' Courts.**—The present law provides for five of these courts, to be presided over by magistrates who need not be attorneys at law. Their jurisdiction is strictly limited; it is simply to enforce all city ordinances by trying, sentencing, and punish-

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\* The Federal courts are discussed in Part III.

ing persons who violate the same. The penalties inflicted by the recorders are either fines or imprisonment. The proceeds of all fines are paid into the city treasury and form a part of the revenue of the city. The recorders are elected for four years. Their salaries range from \$1,500 to \$2,500 a year.

**270. City Courts.**—These courts are four in number, and are known as the First City Court, the Second City Court, the First City Criminal Court, and the Second City Criminal Court. The First City Court has three judges, who generally preside over different rooms, though they sit together for the purpose of examining the bonds furnished by the clerk and the constable, and for the trial and removal of either of these officers. The judges have exclusive original jurisdiction when the defendant resides in that part of the city on the left bank of the Mississippi, and when the amount in dispute or the fund to be distributed does not exceed \$100, exclusive of interest. The cases filed in the court are allotted equally to the three judges, and all cases are appealable to the Court of Appeal for the parish of Orleans.\* The judges have also authority to issue marriage licenses, celebrate marriages, execute commissions, and take testimony, receiving therefor the fees allowed by law. The court has one clerk and one constable, but each judge may appoint one deputy clerk, and each constable appoints

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\* *Definition of terms.* Cases are appealable when they may be carried to a higher court for final settlement. A court has original jurisdiction over cases that *may* begin in that court; it has exclusive original jurisdiction over cases that *must* begin in it. Two courts have concurrent original jurisdiction over cases that may begin in either of them.



such deputies as may be necessary. The judges, the clerk, and the constable are elected for four years by the voters of the district included within the jurisdiction of the court. Each judge receives a salary of \$2,400 a year. The Second City Court has jurisdiction over that part of New Orleans lying on the right bank of the Mississippi. Being less important than the First City Court, it has only one judge; but in every other respect it is like that court. The First City Criminal Court and the Second City Criminal Court, each of which is presided over by one judge, were established by the present Constitution. The territorial jurisdiction of the first extends over the first, fourth, sixth, and seventh municipal districts of the city; and that of the second over the second, third, and fifth districts. They try and punish, without juries and subject to appeal to the Criminal District Court, all offences against the State where the penalty does not exceed six months' imprisonment in the parish jail, or a fine of \$300, or both. In all other cases the judges of these courts have jurisdiction as committing magistrates, with authority to bail or discharge accused persons. The two judges are elected by the voters of the city at large for a term of four years. They must be learned in the law, and must have practiced in the city not less than three years. Their salary is \$3,000 a year.

**271.** District Courts.—These courts are two in number, viz., the Civil District Court and the Criminal District Court. The first has five divisions and the second two; thus there are in all seven judges. These are elected by the voters of the parish of

Orleans for a term of twelve years, and receive each an annual salary of \$4,000. The Civil District Court has a wide jurisdiction. It is, first of all, a probate court; that is, it receives all wills and sees that they are recorded and their provisions executed. It has exclusive original jurisdiction in all cases where the amount in dispute or the sum to be distributed exceeds one hundred dollars, exclusive of interest; and exclusive jurisdiction in suits for separation, for divorce, for nullity of marriage, or for interdiction; and in suits involving title to immovable property, or to office or other public position, or to civil or political rights, and in all proceedings for the appointment of receivers or liquidators to corporations or partnerships, etc. The Criminal District Court has exclusive original jurisdiction for the trial and punishment of all offences when the penalty of death, imprisonment at hard labor, or imprisonment without hard labor for any time exceeding six months, or a fine exceeding \$300 may be imposed. It has also appellate jurisdiction in all cases tried before the City Criminal Courts or the Recorders' Court of New Orleans. Finally it exercises a general supervision over all inferior criminal courts in the parish of Orleans, with the authority to issue writs of Habeas Corpus and such other writs and orders as it may find necessary. To the judges of this court as well as to those of the Civil District Court the various cases are assigned by lot, so as to avoid any danger of bribery or favoritism.

**272. Court of Appeal.**—This court is known as the Court of Appeal for the Parish of Orleans. It holds its sessions in New Orleans from the 2d Monday

in October to the end of the month of June. It is composed of three judges, who must be learned in the law, and must have practiced their profession in the State for six years. They are elected for a term of eight years by the qualified voters of the parishes of Orleans, Jefferson, St. Charles, Plaquemines, and St. Bernard. The salary is \$4,000 a year. The Court of Appeal, with certain exceptions,\* has appellate jurisdiction only. This jurisdiction extends to all cases that have been tried in the City Courts of New Orleans (cases involving less than \$100), and to all cases, civil or probate, tried in the courts of Orleans, Jefferson, St. Charles, Plaquemines, or St. Bernard, in which the matter in dispute or the fund to be distributed exceeds \$100, exclusive of interest, and does not exceed \$2,000, exclusive of interest. As will be shown later, this court has also appellate jurisdiction in cases where certain officials have been tried in the Civil District Court for malfeasance in office, high crimes, etc. No judgment can be rendered by the court without the concurrence of two judges. When for any reason two judges cannot concur, the Court must select a district judge or judges to sit in the case; but in appeals from the City Courts of New Orleans, the court may provide by rules that one or more judges may try the case.

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\* Besides its appellate jurisdiction, the Court of Appeal, like the Criminal District Court, has the power to issue writs of habeas corpus at the instance of all persons in actual custody within its circuit. It has further authority to issue writs of *mandamus*, *prohibition* and *certiorari* in aid of its appellate jurisdiction. (For explanation of these legal terms see "Jurisdiction of the Supreme Court").

**273.** Court Officers.—(1.) *Sheriffs.* Besides the clerks attached to all the courts, the Constitution provides that there shall be a civil and a criminal sheriff for the parish of Orleans. The former executes the writs and mandates of all the civil courts except the City Courts, and the latter does the same for all the criminal courts. Both officers are elected by the parish of Orleans for four years. The criminal sheriff receives \$3,600 a year, while the civil sheriff is paid from certain fees that are fixed by law. Out of these fees the civil sheriff pays his deputies and the expenses of his office, but the salary of the criminal sheriff and of his deputies, as well as the expenses of his office, are paid by the City of New Orleans. Both officers are required to give bond for the faithful discharge of their duties.

(2.) *Constables.* As we have seen, there is one constable for each City Court, who is the executive officer of that court. They are elected for four years, and are paid out of the fees of the office.

(3.) *Recorder and Register.* In order to secure the rights of property, the Constitution provides that there shall be a recorder of mortgages and a register of conveyances for the parish of Orleans. No one can safely buy a piece of real estate unless the deed conveying it to him is duly recorded by the register. Mortgages must be recorded in the same manner. Moreover, when the State assesses a piece of real estate for taxation, the law grants it what is called a "privilege" or claim on the property for the amount of the taxes. When the taxes are paid, the owner of the property must take his receipt to the recorder, and have the

“privilege” canceled. Otherwise his title to the property is not clear. The recorder and the register are elected for four years.

(4.) *The Coroner.* The last officer to be mentioned is the coroner. In cases of death where a murder has been committed, or is supposed to have been committed, the coroner is called in to view the body. He impanels a jury and determines as well as he can the cause of the death. If he finds that a murder has been committed and the supposed guilty person is not in custody, he may have him arrested. He must return to the proper court the inquest of the jury and all the evidence taken. In case any person dies without medical attendance, the coroner may be summoned to give a certificate that the death was natural. The coroner is elected for four years, and receives a salary of \$4,800. He appoints two assistants, who, like himself, must be practicing physicians of the city, and graduates of reputable medical colleges.\*

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\* It will be best to treat the office of district attorney of the parish of Orleans under the head of “District Attorneys.” See p. 225.

## CHAPTER XXXIII

### COURTS IN OTHER PARISHES THAN ORLEANS

As the description of the courts in the parish of Orleans will largely apply to the courts in the other parishes, this part of our subject may be briefly treated. The differences will be found to relate chiefly to the matter of jurisdiction.

**274. Justices of the Peace.**—These magistrates are elected by the voters within the territorial limits of their jurisdiction. When a parish is created, it is divided into justice of police wards, and the number of justices is fixed by the General Assembly. Their jurisdiction embraces both civil and criminal cases. They have exclusive original jurisdiction in civil cases when the amount in dispute does not exceed fifty dollars exclusive of interest, and original jurisdiction concurrent with the District Court when the amount exceeds fifty dollars, exclusive of interest, and does not exceed one hundred dollars, exclusive of interest. They have no jurisdiction in succession or probate matters, or when a succession is a defendant in a suit, or when the State, parish, or any municipality, or other political corporation is a party defendant, or when title to real estate is involved. In criminal matters they have jurisdiction as committing magistrates, and have power to bail or discharge in cases not capital or punishable at hard labor. Moreover, the General Assembly may invest justices of the peace

in general or in any particular parish or parishes with jurisdiction over misdemeanors to be tried with a jury of not more than five nor less than three persons, and with the right of appeal to the District Court in all cases that are not specially appealable to the Supreme Court. (Compare the jurisdiction of the justice of the peace court with that of the several City Courts.)

**275. District Courts.**—The Constitution provides that there may be in the State not less than twenty nor more than thirty judicial districts, the parish of Orleans excepted, and it lays down the boundaries of twenty-nine. In each district there is one judge, except in the twenty-first (including the parishes of Iberville, West Baton Rouge, and Pointe Coupée), where there are two. The judges are elected by the voters of their respective districts for a term of four years, and receive salaries that vary from \$2,000 to \$3,000. The jurisdiction of these courts is both civil and criminal. They have original jurisdiction in all civil matters where the amount in dispute exceeds \$50, exclusive of interest, and in all cases where the title to real estate, or to office, or other public position, or where there is a question of civil or political rights, and in all other cases where no specific amount is in dispute and where no other provision has been made. They have unlimited and exclusive original jurisdiction in all criminal cases, except such as has been vested in the other courts described; and in all probate and succession matters, and in all cases where any political corporation is a party defendant; and in all proceedings for the appointment of receivers and liquidators to corporations and partnerships. Finally

these courts have jurisdiction of appeals from justices of the peace in all civil matters and from all orders requiring a peace bond. Persons sentenced to a fine or imprisonment by Mayors or Recorders are entitled to an appeal to the District Court of the parish, upon giving security for fine and costs of court, and in such cases there shall be a new trial without a jury. It is to be noted that the jurisdiction of these courts differs from that of the two District Courts of the parish of Orleans.

**276.** Courts of Appeal.—Outside the parish of Orleans there are five Courts of Appeal, one in each of the five circuits into which the State has been divided. Each circuit includes several parishes. Until the first day of July, 1904, each Court of Appeal shall consist of two judges, both of whom shall be assigned to their duties by the Supreme Court. One of these must be a judge of a District Court, and the other must be one of the judges of the Courts of Appeal, already existing, whose terms shall not have expired. After the first of July, 1904, the Courts of Appeal must be composed of two district judges, to be from time to time designated by the Supreme Court; provided that district judges shall not be assigned to serve as members of the Court of Appeal for any parish within their own districts, and provided that they shall be paid their actual and necessary expenses when serving as judges of the Courts of Appeal. The Courts of Appeal, with the same exceptions already noted for the Court of Appeal in the parish of Orleans, have appellate jurisdiction only. This jurisdiction extends to all cases, civil or probate,



in which the matter in dispute or the funds to be distributed shall exceed \$100, exclusive of interest, and shall not exceed \$2,000 exclusive of interest. It extends also, as will be shown under the head of Impeachment and Removals, to cases for the removal of certain officials of the State. No judgment can be rendered by the Courts of Appeal without the concurrence of two judges. Whenever the judges disagree, the court appoints a district judge or a lawyer, having the proper qualifications, to sit in the case. In case of the absence, disability, or recusation of one of the judges, the other judge selects another judge or a lawyer to take his place. (A judge recuses himself or refuses to serve when he has an interest in the case.)

The Courts of Appeal were established by the Constitution of 1879 to relieve the Supreme Court of the large number of minor cases that were brought before it.

**277. The Supreme Court.**—This is the highest judicial body in the State. Its decisions command the respect of all. Hence a seat upon the Supreme bench is eagerly sought by the most distinguished lawyers.

(1) *How Composed.* The court is presided over by one chief justice and four associated justices. They are all appointed by the Governor with the consent of the Senate for the term of twelve years. As the first judges under the Constitution of 1879 were appointed for different terms, it results that the present terms do not expire at the same time. Hence the court is continuous. The object of this arrangement, as was noted in such cases as the New Orleans school board, is

never to have an entirely new set of judges, some being always present who are acquainted with the duties of their high office. The salary of each justice, including the chief justice, is \$5,000 a year.

(2) *Qualifications.* These judges must be citizens of the United States and of the State; they must be over thirty-five years of age; they must be learned in the law, and must have practiced law in the State for ten years preceding their appointment.

(3) *Districts and Appointment.* The parishes of the State are so grouped by the Constitution as to form four Supreme Court districts. From the district that contains Orleans two judges are appointed; from each of the others one judge is appointed, making five in all.

(4) *Sessions.* The court sits in New Orleans from the first Monday in November to the end of June. Until the year 1894 the court sat also in Shreveport, Monroe, and Opelousas; but in that year the General Assembly confined all sessions to New Orleans.

**278. Appellate Jurisdiction.**—Except in certain cases specified below, the Supreme Court has no original jurisdiction. Its appellate jurisdiction, however, is very far-reaching. It extends to all cases where the matter in dispute or the fund to be distributed exceeds \$2,000 without interest; to suits for divorce and separation from bed and board, and to all matters arising therein; to suits for alimony, for the nullity of marriage, or for interdiction (that is, where a person is pronounced insane and hence incapable of managing his business); to all matters of adoption, emancipation, legitimacy, and custody of children.

It extends still further to suits involving homestead exemptions, and to all cases in which the constitutionality or legality of any tax, toll, or impost, or of any fine, forfeiture, or penalty imposed by a municipal corporation is contested; and to all cases wherein an ordinance of a municipal corporation or a law of the State has been declared unconstitutional. Wherever there is a question of constitutionality, the Supreme Court is the guardian of the Constitution, and in such cases the appeal on the law and the facts is directly from the court in which the case originated to the Supreme Court. Lastly the appellate jurisdiction of the Supreme Court extends to criminal cases on questions of law alone whenever the punishment of death or imprisonment at hard labor may be inflicted, or a fine exceeding \$300, or imprisonment exceeding six months is actually imposed; and to cases for the removal from office of certain officers of the State, *i.e.*, members of the State Board of Appraisers, railroad commissioners, district attorneys, clerks, and sheriffs.

In all these cases the Supreme Court, if it approves the decisions of the lower courts, affirms them; if it disapproves, it reverses or amends them; but no judgment can be rendered without the concurrence of three judges. When the decree has been sent down to the lower court, it is made the decree of that court and is executed.

**279.** Jurisdiction other than Appellate.—(1) The Supreme Court has original jurisdiction in trials to remove from office all judges of the courts of appeal and of the district courts throughout the State.

(2) It has exclusive original jurisdiction in all matters touching professional misconduct of members of the bar, with power to disbar (or prevent them from practicing in the courts of the State) under such rules as the court may adopt. (3) The court and each of its judges have the power to issue writs of *habeas corpus* at the instance of all persons in actual custody in cases where the court may have appellate jurisdiction. (4) It has power to issue writs of *certiorari*, *prohibition*, *mandamus*, *quo warranto*, and other remedial writs. A writ of *certiorari* is an order directing the judge of a lower court to send up to a higher court a certified copy of the proceedings in any case. A writ of *prohibition* is an order addressed to the judge of a lower court, forbidding him to proceed in the trial of a certain case on the ground that he has no jurisdiction. A writ of *mandamus* is an order addressed to an individual, corporation, or court directing the performance of some duty that has been neglected. A writ of *quo warranto* is an order addressed to a person who claims or usurps an office in a corporation, inquiring by what authority he claims or holds such office. (5) The Supreme Court has control and general supervision of all inferior courts.

**280. The Attorney-General.** — The Attorney-General of the State is elected every four years by the qualified voters of the State at large. He must have resided in the State and practiced law for five years preceding his election. He is authorized and empowered to institute and prosecute all suits he may deem necessary for the protection of the interests and rights of the State. He is also the legal adviser of all

the officers of the State government. His salary is \$3,000 a year.

**281. District Attorneys.**—In each judicial district of the State, including the parish of Orleans, a District Attorney is elected by the qualified voters. Except in Orleans the District Attorneys must attend the sessions of their respective courts, and represent the State in all civil and criminal actions. They also conduct all suits brought by the parish school boards or the police juries. In the parish of Orleans the District Attorney and his assistants prosecute all criminal cases coming before the criminal courts; but in all civil suits to which the State is a party, and in all criminal suits before the Supreme Court, the State is represented by the Attorney-General. It must be understood that the State prosecutes all crimes committed within its limits, and it may bring a civil suit against any individual; but, as it is a sovereign body, it cannot be sued except by permission of the General Assembly. The salary of the District Attorneys is only \$1,000 a year; but in order that they may be diligent in the discharge of their duties, they are allowed a fee in criminal cases whenever they obtain a conviction.

**282. Clerks of Court.**—Except in the parish of Orleans there is a clerk of the district court in each parish, who is *ex officio* clerk of the court of appeals. He is elected for four years. Besides his other duties, he is the parish recorder of conveyances, mortgages, and other acts, duties which, as we have seen, are performed by special officers in Orleans.

**283. Sheriffs.**—Outside of Orleans each parish

elects one sheriff for a term of four years. The duties of the sheriff are manifold. He arrests criminals, conveys convicts to the penitentiary, and executes the writs, summonses, and decrees of all the courts except those of the justices of the peace. He is also *ex officio* tax collector of the parish, an office that is not held by either of the city sheriffs. The salaries of sheriffs vary. They are allowed to receive, for their services in criminal matters, as high as \$500 for each representative the parish may have in the house of representatives, and also five per cent on all taxes collected and paid over.

**284. The Coroner and the Constable.**—Whenever it is possible, the coroner in each parish must be a doctor of medicine, licensed to practice. His duties in the parishes are very similar to those of the city coroner. He is paid by fees. Each justice of the peace court has a constable, who is the executive officer of the court. He is elected for four years.

## CHAPTER XXXIV

### SUFFRAGE AND ELECTION

**285. Suffrage.**—One of the most important rights conferred by the State is the right of suffrage. It is a gift not from the Federal Government but from the State. Hence the State may grant it to such of its citizens as it chooses. To this there is only one exception, which is to be found in amendment XV to the Constitution of the United States. This amendment, framed since the Civil War for the protection of the colored voter, declares that “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” With this exception, therefore, the State fixes such qualifications as it thinks proper upon the right to vote.\* Let us now see what the present Constitution of Louisiana has to say about the suffrage.

**286. General Qualifications.**—With certain exceptions to be stated later, every male citizen of the State and of the United States, native born or naturalized, not less than twenty-one years of age, is entitled to vote at any election held by the people in the State, provided he possesses the following qualifications:

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\* The XIVth amendment further declares that if a State denies the suffrage to citizens twenty-one years of age except for rebellion or other crime, the basis of representation for that State in Congress shall be reduced. To enforce this penalty, however, will require an act of Congress, and doubtless it will never be enforced.

(1) He must have been an actual resident of the State for two years, of the parish for one year, and of the precinct in which he offers to vote for six months next preceding the election; provided that removal from one precinct to another in the same parish shall not deprive any person of the right to vote in the precinct from which he has removed, until six months after such removal.

(2) He must have been at the time he offers to vote legally enrolled as a registered voter on his personal application, in accordance with the provisions of the Constitution and the laws of the State.

(3) He shall be able to read and write, and shall show his ability to do so, when he applies for registration, by making under oath a written application in the English language. If he is unable to write his application in the English language, he has the right, if he demands it, to write it in his mother tongue from the dictation of an interpreter; and if he states on oath that he is physically unable to write his application, it must be written at his dictation by the registration officer or his deputy. The application form is as follows: "I am a citizen of the State of Louisiana. My name is . . . . ., I was born in the State (or country) of . . . . ., parish (or county) of . . . . ., on the .. day of . . . . ., in the year .... I am now .. years .. months, and ... days of age. I have resided in this State since . . . . ., in this parish since . . . . ., and in precinct No. . . . ., of ward No. . . . ., of this parish, since . . . . ., and I am not disfranchised by any provision of the Constitution of this State."



(4) If he be not able to read and write, he shall be allowed to register and vote, if he makes oath before the registration officer or his deputy that he possesses the qualifications of age, residence, and citizenship, and that he is the owner of property assessed to him in the State at a valuation of not less than three hundred dollars, and if such property be personal only, that all taxes on it have been paid.

(5) Even if he lack the educational and property qualifications stated above, the suffrage is granted to every male person who on January first, 1867, or at any previous date, was entitled to vote under the Constitution or statutes of any State of the Union, wherein he then resided, and to every son or grandson of any such person not less than twenty-one years of age at the date of the adoption of the present Constitution (May 12th, 1898). Moreover, no male person of foreign birth, who was naturalized prior to the first day of January, 1898, may be denied the right to register and vote by reason of his failure to possess the educational or property qualifications. The only condition laid upon those wishing to take advantage of this section is that they shall have resided in the State for five years next preceding the date at which they apply for registration, and that they shall have registered before September first, 1898. The avowed object of this section is to prevent colored persons from voting unless they have either the educational or the property qualification; for it will be remembered that prior to January first, 1867, such persons were not generally entitled to vote. If, however, they can read and write, or possess \$300

worth of property, they enjoy exactly the same rights as white persons. The question has been raised whether or not this section violates the XVth amendment of the Federal Constitution, but it has not yet been brought before the courts.

(6) Finally, as was stated under the head of public schools, no person under sixty years of age is permitted to vote at any election who has not, in addition to the above mentioned qualifications, paid before the end of the year, for the two years preceding the year in which he offers to vote, a poll tax of one dollar per annum, to be used in aid of public schools. This provision, however, does not apply to persons who are deaf and dumb, or blind, nor to persons under twenty-three years of age who have paid all poll taxes assessed against them. As was stated above, this whole section concerning the poll tax may be repealed or modified by the General Assembly elected in the year 1908. If it prove satisfactory to the people, the General Assembly will, of course, maintain it.

**287. Non-Voters.**—The following persons, for very obvious reasons, are not allowed to register, vote, or hold any office in the State; Those who have been convicted of any crime punishable by imprisonment in the penitentiary, and who have not been afterwards pardoned with express restoration of the right of suffrage; those who are inmates of any charitable institutions, except the Soldiers' Home; those actually confined in any public prison; all interdicted persons, and all persons notoriously insane or idiotic, whether interdicted or not.

**288. Women.**—It will be noticed that Louisiana,

unlike some of the western States, has not conferred the suffrage upon women. This is true of ordinary elections, but the present Constitution declares that upon all questions submitted to the taxpayers, as such, of any municipal or other political subdivision of the State, women taxpayers having the proper qualifications of age and residence shall have the right to vote in person or by their authorized agents without registration. For instance, as we have seen, women may vote when a special tax for the support of public schools is submitted to the taxpayers. The Constitution of 1898 was the first to grant even a limited franchise to women. It certainly seems proper that when women pay taxes, they should vote whenever the rate of taxation is in question.

**289. Residence Defined.**—To be a resident of a State one must have a domicile in that State, but for the purposes of voting residence is specially defined by the Constitution as follows: "No person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service, either civil or military, of this State or the United States; nor while engaged in the navigation of the waters of the State or of the United States, or of the high seas, nor while a student of any institution of learning." This article, it will be seen, provides that, under certain circumstances, a person may claim residence in a State though he is absent from it, while it prevents him from claiming residence simply because he is present.

**290. Qualifications for Office-Holding.**—No person is permitted to hold any office, State, judicial, or

other, who is not a citizen of the State and a qualified voter of the district in which the functions of the office are to be performed. If an office-holder changes his residence from the State or from the district in which he holds office, his office is thereby vacated. This provision is made because it is believed that a resident of a State or district will have the interests of that State or district more at heart than a non-resident. In England, however, members of Parliament are not compelled to reside in the districts which they represent. It has been maintained by some writers that for certain higher offices it might be wise to introduce the English custom into the United States.

**291. Date of State Elections.**—State elections are held every four years on the Tuesday next following the third Monday in April, but the General Assembly may change this date. Parish elections, except in New Orleans, must always be held on the same day as the general State election. In the parish of Orleans, as we have seen, the elections for parish and city offices are held on the same day, but on a different date from that of State elections.

**292. Date of Federal Elections.**—The date for holding the election to choose Congressmen and presidential electors is fixed by Federal law. In all the States except three it is the Tuesday next after the first Monday in November. All persons qualified to vote for representatives to the General Assembly may also vote for Congressmen and presidential electors.

**293. Election Laws.**—Outside of these constitutional provisions, the general management of elections is left to the General Assembly, and this body passes

elaborate laws on the subject of registration and the method of casting the ballot. Strict laws on these subjects are very necessary, for if fraud and corruption are permitted at the ballot-box, elections cease to represent the will of the majority of the voters and true democratic government ceases to exist. The necessity for some kind of ballot reform has been felt for many years in Louisiana, but the conditions were unfavorable and nothing was done. Just previous, however, to the year 1896, the subject was thoroughly discussed throughout the State, and in this year the so-called Australian system was adopted by the General Assembly. In 1898, the General Assembly, with some slight changes, re-enacted the law of 1896. As this is the best system yet devised for the purification of the ballot, there seems no good reason why fair elections should not prevail in the State. Assuredly they will be fairer than ever before.

**294. The Australian System in Louisiana.**—The law as passed by the General Assembly is not exactly the same for New Orleans and for the rest of the State. In cities of 50,000 inhabitants or more (New Orleans is the only one), it provides for the regular Australian system, but in the rest of the State for a modified form of the same. The most important difference, as we shall see, is that in New Orleans each voter is required to prepare his ballot in a separate, enclosed booth.

#### GENERAL FEATURES

(1.) *Printing and Distribution of Ballots.*—All ballots must be printed at the expense of the

State,\* and must be distributed by the Secretary of State. Formerly these ballots were always printed and distributed at the expense of the political parties who nominated the different candidates or of the candidates themselves. In any case they could be seen and marked by the voter before he entered the polling booth. This method, however, would defeat an important provision of the Australian system, which does not permit the voter to see his ballot until he has entered the polling precinct. The object of this precaution will be quickly seen.

(2.) *Form of Ballots.*—The official ballot must contain the names of all the candidates that have been regularly nominated for the offices specified in the ballot. Just over the list of names of each political party there is a mark or device adopted by that political party. If the voter wishes to vote a straight ticket, he stamps this device. If he wishes to choose his candidates from the different political parties, he may do so by stamping the blank spaces opposite to the names of those candidates.

(3.) *Manner of Voting.*—The voter must present his registration paper to the commissioners in charge. If his name is found upon the official list, a ballot is given to him. After he has marked the names of the candidates for whom he wishes to vote, he folds it in such a manner as to show the official stamp on the back, and then places it in the box provided for that purpose. If the voter spoils a ballot, he may have

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\* This provision does not apply to primary elections or to municipal elections in towns having less than 2,500 inhabitants, or to elections for other purposes than the election of public officers.

another. If he spoils this, he may obtain yet another, making three in all, but he must not take any of the spoiled ballots out of the booth. The voter must mark his ballot without assistance, unless he proves to the presiding commissioners that owing to blindness or other physical disability he is unable to do so. In that case he may have the assistance of two of the commissioners.

(4.) *Voting Shelves*.—In cities of 50,000 inhabitants or more (New Orleans is the only one), enclosed voting shelves are provided, and into one of these enclosures each voter must go alone to mark his ballot. This secures the greatest possible secrecy to the voter in the preparation of his ballot. In cities of less than 50,000 inhabitants and in the parishes, there is a barrier, enclosing a space thirty feet square around each polling place, but within there is only one table or shelf provided for all voters. In other respects the law is practically the same for the whole State.

**295. Object of the System.**—The main object of the system is to prevent bribery at elections. It has been found that the ward “bosses” and other political leaders will not attempt to bribe a voter when they cannot see how he has marked his ballot. With all the names of the candidates on one sheet and with the enclosed voting shelves they can never be certain that the voter has cast his ballot as he has been paid to cast it. Hence with the appearance of the Australian system the bribing of voters tends to disappear. The result is that where the system has been once adopted, it has never been subsequently rejected.

**296. Boards of Supervisors of Elections.**—In

each parish of the State the elections are managed by a board of supervisors. In Orleans the board consists of a president appointed by the Governor, the registrar of votes for the parish, and the civil sheriff. In the other parishes it consists of a president appointed by the Governor, the registrar of voters, and a third member elected by the police jury.

**297. Commissioners.**—These boards appoint in Orleans and in the rest of the parishes three commissioners as officers to preside over the election at each polling booth. As far as possible these commissioners are chosen in such a manner as to represent the different political parties making nominations. They see that only legal voters cast their ballots and that a fair count of the votes is made. In case they fail to perform their duties, they are liable to severe penalties.

**298. Count of Ballots. Returns.**—As soon as the polls are closed, the counting of the ballots begins, and is continued without delay until completed. Three tally sheets are kept, which contain a full record of all the votes cast. When the last ballot has been recorded, the officers of election must make out, in triplicate form, compiled statements, containing the number of votes cast for each candidate for national, State, parochial, or municipal offices, together with the number of ballots found in the box, the number rejected (if any), etc. After these compiled statements have been sworn to by the commissioners, one of the tally sheets and one of the statements must be delivered to the Board of Supervisors of the parish; the second tally sheet and statement must be forwarded



to the Secretary of State; and the third, together with the ballots and poll list, must be sealed up in the ballot box, and delivered to the clerk of the court, by him to be preserved for a period of six months.

**299. Nomination of Candidates.**—As the law allows great freedom in regard to nominations, it is not difficult for any political party or any independent body of voters to place their candidates before the people. Consequently a wide choice is generally given to the voter. In substance the provisions of the law are as follows:

(1) Any convention of delegates representing a political party or other nominating body which at the preceding State election polled ten per cent of the total vote cast in the State or district, is entitled to issue certificates of nomination, which will entitle its candidates to places on the official ballot.

(2) Candidates for electoral districts, or municipal, parish, and ward offices may be nominated and their names placed on the official ballot, without conventions, by means of nomination papers. These papers must be signed by qualified voters to the number of at least 1,000 for any officers to be voted for by the electors of the State at large; 100 for parish or municipal officers, members of the General Assembly and Congress, and 25 for ward officers.

These nomination papers and the certificates of nomination by conventions must be filed with the Secretary of State on certain specified days before the election. All nominations so made are deemed regular, and any objections to them must be made within three days. These objections are passed on by the Secretary of

State, the auditor, and the treasurer, who also serve as a board to decide which candidates are entitled to the name of Democrat, Republican, etc.

**300. Registration Law.**—In order to receive a ballot, the voter, as has been said, must show to the commissioners of election his registration paper, which is compared with the roll in their possession. To keep this roll free from fraudulent names has been found to be one of the most difficult tasks a State Legislature can undertake. This is especially true in great cities, like New Orleans, where there is a large floating population of immigrants who are frequently registered illegally. Yet the Australian ballot system will not preserve the purity of the elections if those who have no right to vote are permitted to put their names on the registration roll. Recognizing this, the General Assembly at the same time that it passed the ballot law, also passed the most stringent registration law that the State has ever had.

**301. Provisions of the Law.**—(1) *Officers.* For the parish of Orleans there is a supervisor of registration, who is appointed by the Governor, with the consent of the Senate, for four years. This officer has general charge of the registration books. In the other parishes the same duty is assigned to the assessor of taxes, who is also registrar of voters.

(2) *New Registration.* In the parish of Orleans the supervisor is required to make a new and complete registration of the qualified voters every two years, beginning on the first of January, 1899. The assessors in the other parishes must perform the same task every year in which a general State election is held.

(3) *Application.* (See paragraph 286).

(4) *Penalty for False Oath.* Any person who makes a false oath for the procuring of a certificate of registration, naturalization, or declaration of intention to become a citizen shall be guilty of a felony, and upon conviction shall be fined not less than \$1,000 and imprisoned not less than one nor more than five years. Any one convicted of aiding as a witness or otherwise in obtaining such a certificate shall receive the same punishment.

(5) *Purification of the Rolls.* The supervisor and the assessors throughout the State are required to erase names from the books of registration in the following cases.—When they know of the death or removal of the person registered; where the insanity of a person registered is legally established; upon reliable information that the person registered has been convicted of felony. Persons who are entitled to be registered, but whose names have been erased because of their removal, etc., may obtain new registration certificates.

**302. The Sixteenth Sections.**—In order to understand this subject, we must remember that in all the States but the original thirteen, and those made from them and Texas, the wild, uncultivated lands once belonged to the nation, and are called public lands. These States, twenty-six in number, are sometimes called the public land States. The public lands Congress caused to be surveyed into townships, six miles square, and these to be divided into thirty-six sections, each one mile square, numbered as shown in the diagram below. Furthermore, in disposing of the lands,

Congress early adopted the plan of setting apart or reserving section no. 16 in every township for the support of common schools. This was done in Louisiana when the State came into the Union in 1812. Many of the school sections have been sold, and the proceeds invested in the bonds of the State which pay four per cent. interest to the townships concerned. In the States admitted to the Union since 1848, section no. 36 has also been set apart for the same purpose.

A CONGRESSIONAL TOWNSHIP \*

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

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\*The location of the townships in Louisiana can be seen on the official map of the State. (Hardee's.)

## CHAPTER XXXV

### THE MILITIA

**303. How Established.**—In discussing the Bill of Rights, we found it provided that a well regulated militia being necessary to the security of the State, the right of the people to keep and bear arms (not concealed) cannot be taken away. The Constitution further declares that the General Assembly shall have authority to determine how the militia of the State shall be organized, trained, equipped, etc., and of whom it shall be composed. Accordingly the General Assembly has passed laws governing the militia throughout the State.

**304. Composition of the Militia.**—The militia is composed of all the able-bodied male citizens of the State between the ages of 18 and 45, who are not exempted by the laws of the United States or of Louisiana. Persons exempted from service in the State militia are:—(1) All persons in the army and navy of the United States who are exempt from service in the militia by the laws of the United States. (2) Every person who, by reason of physical disability, may be unfit for the performance of military duty, and who can produce a physician's certificate to that effect. (3) All idiots, lunatics, and convicted felons not pardoned. (4) All clergymen, and the judges of the various courts during their terms of service. The Constitution also declares that the General Assembly may exempt the

members of religious societies whose tenets forbid them to bear arms, provided such persons pay a money equivalent for their services. The uniformed militia force of the State is organized by the Governor, whenever practicable, in all the parishes, and is known as the Louisiana State National Guard

**305. Commander-in-Chief.**—The Governor is commander-in-chief of all the militia, and holds the rank of lieutenant-general. He is entitled to the following staff officers: One adjutant-general with the rank of major general; one inspector general, one quartermaster general, one surgeon general, one commissary general, one chief of ordnance, one judge advocate general, each with the rank of brigadier-general; one inspector general of rifle practice; one chief signal officer; and as many aids-de-camp with the rank of colonel, lieutenant-colonel, and major, as he may see fit to appoint.

**306. Services of the Militia.**—The enrolled militia of the State is subject to no active duty except in cases of war, invasion, the prevention of invasion, the suppression of riots, or when the civil officers are to be aided in the execution of the laws of the State. In such cases the Governor, as commander-in-chief, may order out for active service, by draft or otherwise, as many of the militia as necessity demands. As a general rule, however, the Governor employs only those militia companies that have already been enrolled in the State.

**307. Pay of the Militia.**—When not in active service, neither the officers nor the men receive either rations or pay. But when called into active service,

the officers receive the same pay and allowances as the like grades in the United States army; while the enlisted men receive double the pay authorized by the United States army regulations, with seventy-five cents a day per head for subsistence.

**308. Exemption from Jury Duty.**—The active uniformed members of the Louisiana State National Guard are exempt from all jury duty. As members of the jury in the State courts of Louisiana are paid very little for their services, many persons are anxious to escape jury duty. Hence the exemption just mentioned helps to swell the ranks of the militia through voluntary enlistment.

**309. National Service.**—The militia of any State may be called into the service of the United States whenever the President finds it necessary, in order to execute the laws of the Union, to suppress insurrection, or to repel invasion. Congress provides for such emergencies. When in the national service the State militia is subject to the President as commander-in-chief; but it cannot be sent beyond the boundaries of the United States.

## CHAPTER XXXVI

### IMPEACHMENT AND REMOVAL

As the various officers of a government may misbehave themselves during their terms of office, every Constitution provides for their removal. In the case of the more important officers this is generally accomplished by means of impeachment, and in the case of the minor officers by trial before certain courts. Every officer is made to feel that at all times he is responsible for any misconduct.

**310. Court of Impeachment.**—Under the government of the United States the senate sits as a court to try cases of impeachment against Federal offices; in Louisiana the State senate performs the same duty in the trial of State officers. The charter of New Orleans, as we have seen, provides that a selected number of the council shall try cases of impeachment brought against city officers.

**311. State Officers Liable to Impeachment.**—The officers of the State government that are liable to impeachment are the governor, lieutenant-governor, secretary of state, auditor, treasurer, attorney general, superintendent of public education, railroad commissioners, and the judges of all the courts of record. (A court of record is one in which all the acts and judicial proceedings are enrolled on paper or parchment and preserved. In Louisiana the term embraces all courts except those of the justices of the peace and the recorders.)



**312. Causes of Impeachment.**—The above-mentioned officers may be impeached for any high crimes or misdemeanors, for non-feasance or malfeasance in office, for incompetency, for corruption, habitual drunkenness, etc.

**313. Method of Impeachment.**—All impeachment proceedings must be instituted by the house of representatives. This body through a committee brings the necessary charges before the senate. When trying such cases the senators must be put upon oath or affirmation because they sit as a jury. No person can be convicted except by the vote of two-thirds of all the senators present. A jury in capital cases must be unanimous, but in cases of impeachment a two-thirds vote of the senators is considered sufficient both under the Federal and the State Constitution. When the governor of the State is on trial, the chief justice or the senior associate justice of the supreme court must preside over the senate. The object of this provision is to prevent the lieutenant-governor, who is ex-officio president, from presiding, as he is the legal successor of the governor and might be interested in his removal.

**314. Suspension from Office.**—All officers, except the governor, while impeachment proceedings are pending against them, are forbidden to exercise the functions of their office, and temporary appointments are made by the proper authorities to fill their places.

**315. Judgment.**—In case a two-thirds majority cannot be obtained, the accused is set free. If he is convicted, the sentence extends only to removal from office and disqualification to hold any office of trust or

profit under the State. But whether acquitted or convicted, the accused person is liable to prosecution under the laws of the State for any criminal offences charged against him in the impeachment. As was noted under the Executive Department there can be no pardon granted in a case of impeachment.

**316. Removals without Impeachment.**—As impeachment is a rather cumbersome proceeding, the Constitution provides other methods of removing any official of the State from office, with the exception of the governor.

(1) *Removal by the Governor.* While the governor is removable only by impeachment, he himself, for any reasonable cause, is required to remove any officer of the State, if he is requested so to act by an address of two-thirds of the members elected to each house of the General Assembly. The causes for such removal must not only be stated in the address, but must be inserted in the journal of each house.

(2) *Removal by the Supreme Court.* All judges of the courts of appeal and of the district courts may be removed from office for any of the causes mentioned above by judgment of the supreme court, which has original jurisdiction in such cases. The suit for removal may be brought by the attorney-general or by the district attorney whenever in his opinion sufficient cause exists; and it is the duty of either one of these officers to bring such suit whenever instructed by the governor in writing, or on the written request or information of twenty-five citizens who are taxpayers in the district wherein the judge exercises the functions of his office. When the suit is brought by

the citizens and the accused is acquitted, they must pay all costs.

(3) *Removal by other Courts.*—All members of the State board of appraisers except the auditor, all railroad commissioners, district attorneys, clerks of court, sheriffs, coroners, justices of the peace, and judges of the inferior courts of New Orleans and other cities, and all other parish, municipal, or ward officers, may be removed by judgment of the district court of the domicile of such officers (in the parish of Orleans, the civil district court). For any of the causes enumerated above, the district attorney, except when the suit is brought against himself, must bring suit against any of these officials at the request of twenty-five tax paying citizens in the case of all except ward officers, and of ten citizens in the case of ward officers. A suit against the district attorney must be brought by the district attorney of an adjoining district or by a lawyer whom the judge appoints for that purpose.

**317. Appeals and Suspensions.**—From the courts that try the latter cases an appeal is granted. Cases against appraisers, railroad commissioners, district attorneys, clerks, and sheriffs may be appealed to the Supreme Court; cases against all other officers to the Courts of Appeal. While a suit for removal is pending, there is no suspension of the accused from the duties of his office.

## CHAPTER XXXVII

### TAXATION

**318.** **Necessity and Justice of Taxation.**—How to establish a wise and efficient system of taxation is one of the most difficult problems with which the government of any country has to deal. No perfectly satisfactory system has yet been devised. The methods adopted in the different States of the Union vary considerably as to details, and many experiments have been tried. That every government, however, should raise enough money for its support is absolutely necessary; without the taxes levied upon the people the government would be unable to maintain itself except by borrowing; nor could it borrow unless it were supposed to be able to pay the interest on the loans. The prerogative of every government, therefore, is to tax the people over whom it exercises control. Whether a man recognizes the fact or not, the government under which he lives is a partner in his business. His life, his liberty, and the possession of his property are possible only under some form of government. Acting on this principle, the government can justly compel any one possessing property to contribute to its support, or if he has no property to contribute the labor of his hands.\* Nearly all

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\* For example, when the authorities of a district compel the residents to work for a certain number of days on the public roads or pay an equivalent.

intelligent persons admit the truth of this proposition, but many years ago a distinguished writer of this country, named Thoreau, held a different theory. He believed that if he did not approve of the policy of the government, he ought not to be forced to contribute to its support. The officers of the law, however, did not take the same view. They compelled the payment of his tax, and they were right. If for no other reason, Mr. Thoreau should have paid his taxes because, without the protection of the government, his property might have been taken from him, and he would have had no legal redress. It may be added that the value of property is largely due to this same protection. Unless the possession of it can be secured by law, property is not desirable, no one wishes to purchase it.

**319. Basis of Taxation.**—That every one should contribute to the government “according to his ability” seems to be the generally accepted principle of taxation among modern political economists, but it is so difficult to estimate a man’s ability in any system of taxation, that the principle is not easy to put into practice. While the government has the right to levy taxes, it should be held strictly responsible for the use it makes of the money thus taken from the people. The funds raised by taxation should be carefully and economically spent to pay the necessary expenses of conducting public affairs and making public improvements.

**320. Federal Taxation.\***—It will aid us to under-

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\* For fuller account of Federal taxation, see Part III.

stand the subject of State taxation, if we examine briefly the system adopted by the Federal Government for its own support. A tax has been very properly defined as "an exaction or charge made to fill the public coffers for the payment of the debts and the promotion of the general welfare of the country." Accordingly the Federal Constitution declares that Congress shall have power to lay and collect taxes, duties, imposts, and excises [in order] to pay the debts and provide for the common defence and general welfare of the United States. Duties are the taxes laid on foreign goods at the custom houses. Imposts is a term often used in the custom house instead of duties, but it is also sometimes synonymous with taxes. Excises are taxes laid upon articles produced within the country, such as tobacco, whisky, etc. The income of the Federal Government, therefore, is derived mainly from external taxes or duties on imported goods, and from excises or internal revenue taxes on whisky, tobacco, etc. These are often termed indirect taxes, because it is believed that the persons by whom they are paid can always shift the tax to the shoulders of the consumer by making him pay a higher price for the goods. On several occasions, however, Congress has also levied direct taxes which the Federal Supreme Court defines as poll taxes, taxes on land, or taxes on incomes; but no such taxes are laid at the present time.\*

### **321. Direct Taxation the Only Form in Louisi-**

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\* The Federal Government derives some income from the rent or sale of public lands.

ana.—If the theory of indirect taxation mentioned above is true, the inhabitants of Louisiana, like those of other States, contribute a great deal indirectly to the support of the general government. In addition to this, however, they are required to contribute by direct taxation to the support of their own government. Many persons are not aware that they are paying any other kind of taxes than those of the State in which they live. As the Federal Constitution gives Congress entire charge of foreign commerce, it forbids a State to levy any impost or duty on imported or exported goods, except to cover the expenses of inspection laws. Although the State is not forbidden to lay excise taxes, such taxes are not generally laid because they would duplicate the Federal taxes.\* It will be seen, therefore, that every State must adopt the only form of taxation that is not now exercised by the Federal Government, *i.e.*, direct taxation.

**322. Limitations on Taxation.**—In Louisiana there are two limitations, one of objects and one of rate.

(1) *Objects.*—The Constitution declares that the taxing power shall be exercised only to carry on and maintain the government of the State and the public institutions thereof; to educate the children thereof; to preserve the public health; to pay the principal and interest of the public debt; to suppress insurrection and to repel invasion or defend the State in time of war; to provide pensions for indigent Confederate

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\* The license charges imposed in Louisiana (see p. 259) are very similar to the Federal internal revenue taxes.

soldiers and sailors and their widows; to establish markers or monuments upon the battlefields of the country commemorative of the services of Louisiana soldiers on such fields; to maintain a memorial hall in New Orleans for the collection and preservation of relics and memorials of the Civil War; and for the building and maintenance of levees.

(2) *Rate.*—The Constitution further provides that the State tax on property for all purposes shall not exceed six mills on the dollar of its assessed valuation, and that no parish, municipal, or public board tax for all purposes shall exceed ten mills. To the latter clause, however, there are two exceptions. Municipal corporations, parishes, and drainage districts, the city of New Orleans excepted, when authorized by a vote of a majority in number and amount, or value, of the property taxpayers, voting at an election held for the purpose, may issue bonds to pay for waterworks, sewerage and other public improvements, and may levy a special tax of five mills to pay the interest on the same; and under a similar authorization, any parish, municipal corporation, ward or school district may levy a special tax in excess of the ten mills limit for the support of public schools, for the building of school houses, and for other permanent improvements. It will be seen, therefore, that there may be a difference between the rate of State taxation and that of parishes, municipalities, etc. This brings out the distinction between local and general taxes. Parishes and municipal corporations are taxed for the support of the State government; but the Constitution wisely provides that, under certain conditions, they may also



tax themselves for the support of their local government and for such public improvements as they may find necessary.

**323. Kinds of Direct Taxes.**—If we consider taxes with reference to the objects upon which they are laid, there are three kinds, *viz.*, the tax on individuals (the poll tax); the tax on land and its improvements (real estate or immovables); and the tax on personal property (movables). (1) As has already been stated, the poll tax is levied upon every male inhabitant of the State between the ages of twenty-one and sixty years. It is devoted to the support of public schools in the parishes in which it is collected. If a person has no property assessed against him, the Constitution declares that the collection of the poll tax cannot be enforced; but as the payment of the tax is required of voters, it is widely collected even where there is no property. (2) The tax on real estate or immovables constitutes the chief source of revenue in the State. The term “real estate” includes lands and all immovable improvements thereon, such as residences, barns, sugar houses, etc. (3) The term “personal property” includes a great variety of objects, such as (*a*) horses, cattle and other live animals, (*b*) all kinds of vehicles, (*c*) merchandise, (*d*) watches and jewelry, (*e*) household furniture exceeding \$500 in value, (*f*) stocks, bonds and all other objects possessing monetary value.\* The tax on certain kinds of movables, such as cattle and vehicles, which can be seen by the assessor, is easy to collect,

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\* United States bonds and those of the State of Louisiana are non-taxable.

but this is not true of such movables as stocks, bonds, and jewelry. Here the assessor must rely very largely on the honesty of the owners, who are often very successful in concealing this kind of wealth. Hence the tax on personal property brings in such small returns and creates such inequalities between those who pay it and those who do not, that it has been seriously questioned whether it would not be better to abolish it altogether.

**324. Tax on Inheritances, Legacies, and Donations.**—This tax has already been explained under Funds for Public Schools. It will be remembered that it can be enforced only when the property concerned has not previously borne its just proportion of taxes.

**325. Exemptions.**—In Louisiana not all property is liable to taxation. Besides public property, which from its very nature is exempt, the framers of the Constitution thought proper to exempt the following kinds:

- (1.) All places of religious worship or burial.
- (2.) All charitable institutions.
- (3.) All buildings and property used exclusively for colleges or other school purposes; or for public monuments or historical collections.
- (4.) The real and personal estate of any public library, and that of any other literary association used by or connected with such library.
- (5.) All books and philosophical apparatus, and all paintings and statuary of any company or association kept in a public hall.

In order that there may not be any abuse of this

exemption, the Constitution expressly provides that the property so exempted shall not be used or leased for purposes of private or corporate profit or income. Hence, for example, an educational institution must pay taxes on any of its property which is not in actual use for school purposes. The only exception to this article was made by an amendment to the Constitution of 1879, ratified in 1884, which declares all the property of the Tulane University of Louisiana, whether used actually for school purposes or leased for the support of the University, shall be exempt from taxation. If, however, this property ever exceeds five millions of dollars in value, the excess will be liable to taxation.\* This amendment is recognized as valid by the present Constitution.

**326. Further Exemptions.**—(1.) All household property to the value of \$500 is exempt from taxation. A similar exemption is found in a number of other States. Its object is to relieve the poorer classes who have only a moderate amount of household property from the burden of taxation; but, of course, it applies to the richer classes as well.

(2.) Except during the last twenty-five years, the people of Louisiana devoted their energies almost entirely to agriculture; there were but few manufactures in the State except for the making of sugar. In order to encourage the rise and development of manufactures, the Constitution of 1879 provided that beginning with the year 1880 certain important industries should be exempt from all taxation for a period

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\* For the privileges offered by the University to the people of the State as an equivalent, see below under "State Institutions."

of twenty years. The Constitution of 1898, without interfering with this provision, declares that there shall be exempt from parochial and municipal taxation for a period of ten years from January 1, 1900, the capital, machinery, and other property employed in mining operations, and in the manufacture of textile fabrics, yarns, rope, cordage, leather, shoes, harness, saddlery, hats, clothing, flour, machinery, articles of tin, copper, and sheet iron, agricultural implements, furniture, and other articles of wood, marble, or stone; soap, stationery, ink and paper, boat building, and fertilizers and chemicals. The only condition attached to this exemption is that not fewer than five hands shall be employed in any one factory.

To encourage the building of railroads, the Constitution further provides that under certain conditions railroads or parts thereof constructed prior to January 1, 1904, shall be exempt from all taxation for a period of ten years from the date of completion.

**327. Taxations for Levees.**—One of the most important objects of taxation in Louisiana is to maintain a system of levees and thus prevent the inundation of the rich lands of the State in times of high water. Accordingly the Constitution provides that a general tax of one mill may be levied on all the taxable property in the State for the maintenance of levees. As the prevention of the frightful crevasses that have from time to time devastated the State concerns all, all may be taxed for this purpose. This tax, however, must fall within the six mills levied for State purposes.

## CHAPTER XXXVIII

### ASSESSMENTS. LICENSES. HOMESTEADS

**328. Importance of Assessments.**—The proper assessment of property is sometimes a matter of as great importance to the taxpayer as the rate. It will be easily understood that a low rate of taxation might be as burdensome if the assessment were high, as a high rate would be if the assessment were low. The Constitution provides that the assessment of property must never exceed its cash value, and that taxpayers shall have the right to test the correctness of their assessments before the courts of justice. As it is often quite difficult, however, to determine the cash value of property, assessments may fall much below the price that the owner would accept. In other cases they may represent the full value of the property. If property is assessed too high, the owner is likely to complain; if it is assessed too low, he is not likely to say anything.

**329. Appointment of Assessors.**—All assessors in Louisiana are appointed by the Governor, with the consent of the Senate, for four years. The object of selecting assessors in this manner is to make them as far as possible independent in the discharge of their duties. It is believed that this independence would be greatly impaired if they were chosen by a popular election. Some at least might fail to discharge the duties of their office strictly, for fear they would not be re-elected.

**330. Number and Duties of Assessors.**—One assessor is appointed in each parish, except Orleans, in which there seven assessors, one from each municipal district. The assessor sends to each taxpayer a list of the various kinds of property taxable by law. Within ten days the taxpayer may return this list with a sworn statement of what property he possesses and may add what he thinks each piece of property is worth, but he is not compelled by law to make such returns. As soon as the list is returned the assessor either accepts the estimate of the owner or makes his own estimate of what the property is worth. If no list is returned, the assessor finds out as best he can what property the taxpayer has, and estimates the value thereof. If he believes that an incorrect return of property has been made, it is his duty to add a list of what has been omitted. The assessors, moreover, must make rolls containing a description and valuation of all the taxable property in the State.

**331. Valuation.**—The Constitution declares that the valuation put upon property for State purposes shall be taken as the proper valuation for parish and municipal taxation. A single valuation of all property throughout the State is both simpler and more economical.

**332. Police Juries and Assessments.**—In order to obtain a fair and uniform valuation, the police jury, of each parish (other than Orleans), meets on the first Monday of July as a board of review to pass on applications for reduction and to examine into the fairness of all assessments that have been made. On the total assessment, they levy taxes at a rate that

will defray all the expenses of the parish, provided only that this rate shall not exceed one per cent.

**333. The Orleans Board.**—In Orleans, the City Council sits as a board of review, though it may delegate this duty to a committee, known as the “Committee on Assessment.” Between the first and the twentieth of March taxpayers may appear before the Committee and demand corrections. As was said above, whenever a taxpayer who has made the proper returns cannot obtain what he regards as justice, he may carry the question into court.

**334. Special Board of Appraisers.**—The Constitution of 1898 provides that there shall be a State Board of Appraisers, composed of the State Auditor and six other members, to be elected for four years by the Governor, Lieutenant-Governor, Treasurer, Attorney-General, and Secretary of State, one from each Congressional district, whose duty it shall be to assess the property belonging to corporations, associations, and individuals employed in railway, telegraph, telephone, sleeping car, and express business. The assessments of property made by this board are final, unless the parties interested bring suit against the board and have the assessments changed by the court.

**335. Definition of a License.**—A license is a charge imposed for public revenue purposes on persons engaging in certain trades, occupations, or professions. In some cases this charge is fixed at so much per capita ; in others it is graded according to the gross annual receipts of the business. A parish or city may levy a license charge on the same classes of occupations ; but it must never exceed the State license. The

city of New Orleans, for example, imposes a license charge of the same amount as the State upon all the occupations and professions that are licensed by the State.

**336. Classes of Occupations Licensed.**—There is a great variety of occupations now subject to this license charge. For instance, all merchants, all proprietors of hotels and places of amusement, all bankers, and all manufacturers of distilled liquors, tobacco, and cotton seed oil. Among professional persons the following must pay a license charge:—all physicians, attorneys at law, dentists, oculists, photographers, etc. The Constitution forbids the General Assembly to levy any license charge upon clerks, laborers, clergymen, school teachers, or persons engaged in agricultural, horticultural, mechanical, or mining pursuits; or upon any manufacturers except those of distilled liquors, tobacco, and cotton seed oil.\*

**337. Homestead Exemptions.**—The Constitution provides that the homestead actually owned and occupied by any head of a family or by any one having a father, mother, or other person dependent upon him or her, shall be exempt, under certain conditions, from seizure and sale for any debts contracted by the owner. The benefit of this exemption may be claimed by the surviving wife of the owner, or by his minor children. A homestead may include land to the

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\* The manufacturers of cotton seed oil have been so prosperous that it was not thought necessary to encourage them by an exemption. No exemption is ever offered to manufacturers of liquors and tobacco. On the contrary they are generally taxed heavily; for it is believed that "vices have broad backs." Dealers in pistols and pistol cartridges also pay a special license to the State.



extent of one hundred and sixty acres, together with the buildings and appurtenances. Under the same exemption come two work horses, one wagon or cart, one yoke of oxen, two cows and calves, twenty-five head of hogs, or one thousand pounds of pork, whether these objects be attached to a homestead or not ; and on a farm, the necessary quantity of corn and fodder for the current year, and the necessary farming implements. No registration of homesteads is required ; but the whole amount of property exempted must never exceed the value of \$2,000.

**338.** Conditions.—To hold a homestead exempt the owner must have complied with the following conditions : he (or she) must have paid the purchase price of the homestead ; he must have paid for any labor or material he has engaged for building or repairing it ; he must have paid his taxes and assessments ; he must have paid over to the proper persons any money that, as a public officer or an agent, he may have collected ; and finally he must have no debts for rent resting upon his property as security. If he has discharged all these obligations, the homestead cannot be taken from him by any other creditors. It is to be noted, however, that no husband can take advantage of the homestead exemption whose wife owns and is in actual enjoyment of property to the value of \$2,000. Moreover, any person entitled to a homestead may waive or give up the privilege by signing with his wife and having recorded, in the office of the recorder of mortgages of his parish, a written waiver of the same ; or he may sell his homestead, subject to the claim of his creditors. The object of

the homestead provision in the Constitution is to prevent families in which there are dependent persons from losing the bare means of subsistence through ignorance or recklessness in contracting debts. It is regarded as a wise provision.

## CHAPTER XXXIX

### GENERAL PROVISIONS OF THE CONSTITUTION

Under this head are enumerated a number of more or less important articles touching a variety of topics. Only the most important can be mentioned here.

**339.** Treason against the State.—Treason against the State of Louisiana consists only in levying war against it or adhering to its enemies, by giving them aid and comfort. In this country the crime of treason is always very carefully defined, because formerly in England so many different kinds of actions were construed as treasonable that men's liberties were never safe. The Constitution further declares that no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court. Thus it is more difficult to prove a case of treason than any other crime.

**340.** Federal and State Treason.—The treason clause of the Louisiana Constitution is borrowed literally from the Federal Constitution, which provides for treason against the United States government. When the Federal Constitution was framed in 1787, a motion was made to deny to the various States the power to punish treason, but it was voted down. Hence it will be seen that it is possible to commit treason either against the Federal or against the State government. Before the Civil War, the Southern

people maintained that, as a State had the power to punish for treason, they owed prime allegiance to their respective States, and must follow their State if it seceded from the Union. Since the result of the war, however, practically decided that a State cannot secede, the South has accepted the decision of battle and no longer places State allegiance before Federal allegiance. In Louisiana there has never been a case of treason; but in Rhode Island in 1844, T. W. Dorr was convicted of treason against the State and imprisoned therefor.\*

**341. Ex Post Facto Laws and Obligation of Contracts.**—The General Assembly can pass no *ex post facto* law, nor any law impairing the obligation of contracts. “An *ex post facto* law,” says Chief Justice Marshall, “is one which renders an act punishable in a manner in which it was not punishable when it was committed.” In the United States the phrase *ex post facto* applies to criminal laws only.† The injustice of such legislation is easily seen. It is not surprising, therefore, that the Federal Congress is also prohibited from passing *ex post facto* laws. A large amount of the business of the world is transacted by means of contracts or written agreements. If laws could be passed to modify or weaken the binding force of these contracts, the result would be to destroy the confidence that is so essential to the business world. The Federal government is neither forbidden nor empowered to impair by law the obligation of its own

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\* For the pardon of treason, see under “Powers of the Executive,” p. 205.

† The American Government.

contracts. It would seem that it was unnecessary to insert the foregoing provisions in the State Constitution, for the Constitution of the United States expressly forbids any State to enact these particular laws. Hence the General Assembly could not exercise such a right, even if it were not forbidden in the State Constitution. It would be pronounced unconstitutional by either the State or the Federal Courts.

**342. Immunity of Private Property.**—Private property cannot be taken or damaged for public purposes without just and adequate compensation being first made. It frequently becomes necessary for the State to take private property for public purposes. For instance, it may be necessary to take a portion of a man's land to build a public road or a court-house. No one can refuse to give up the land required; for the government can seize it by what is known as the right of "eminent domain." In compensating persons for property thus taken the amount paid is the supposed cash value of the land. If there is any dispute, a jury of owners of real estate (freeholders) is chosen to determine the value. No compensation, however, is allowed to riparian proprietors, outside of New Orleans, for land taken for the site of levees. In cases where compensation was demanded, the courts have held that as the owners of land fronting on the river were required in the original French and Spanish grants to build their own levees, the present owners cannot justly claim any damages, now that the State and the Federal Government undertake the task of caring for the levees. In New Orleans compensation has been granted to persons for certain pieces of

property which did not originally front upon the river, and which were seriously damaged by the building of a new levee, and the present Constitution specially provides that in the city of New Orleans any person whose property has been appropriated by the levee board for levee purposes may sue the board for the value of the property. No claim, however, for compensation can be made if the land appropriated is *batture* property (made by accretions of the river), or vacant property where only a part is taken and the effect of the levee building is to protect the rest, or property the control of which for commerce has been vested in the State or city authorities. The Federal Government is also forbidden by the Constitution of the United States to take private property without due compensation, and the XIV. amendment practically denies the right to the several States.

**343. Paupers.**—Each parish is required to support all infirm, sick, and disabled paupers living within its limits. Every town or city, however, which is not under the control of the parish police jury, must support its own paupers. This provision of the Constitution is carried out by the establishment of what are termed poor houses.

**344. Board of Arbitration.**—It is the duty of the General Assembly to pass such laws as may be necessary to decide differences by arbitration. This article was inserted also in the Constitution of 1879, and in accordance therewith the General Assembly, in 1894, provided for the appointment of a State Board of Arbitration. This board consists of five persons, appointed by the governor. Two of them must be

employers of labor, two must be employés, and the fifth is appointed on the recommendation of the other four.

**345. Duties of the Board.**—Whenever there is any “strike” or “lockout” of labor in the State, the board may be called upon by the mayor of a city or other proper authority to visit the locality. After an examination of the case, the board advises the respective parties as to what, if anything, ought to be done by either party or both to adjust the dispute. It has been called together during several labor disputes, and has already done good service in the State, though its office is only one of advice. Its decisions are generally strongly supported by public opinion.

**346. Gambling.**—Gambling is declared to be a vice, and the General Assembly is required to pass laws to suppress it. As this provision is found also in the Constitution of 1879, the General Assembly had already, even before the framing of the present Constitution, enacted laws of great stringency on the subject, with the most excellent results. The present Constitution adds that the pernicious practice of gambling or dealing in “futures” on agricultural products or articles of necessity, where the intention of the parties is not to make an honest *bona fide* delivery of the goods, is contrary to public policy, and the Legislature must pass laws to suppress it. This is a form of speculation in which contracts are made for the future delivery of products; but the contracting parties do not expect to deliver or to receive the actual goods; for balances may be settled in money according to the state of the market. Such

speculation frequently leads to the "cornering" or monopoly of some leading staple in the market, and to the forcing up of the price of the necessities of life. Many persons believe that this kind of speculation unsettles the market and causes distress to the poorer classes. Hence this provision of the Constitution, and another following it, which declares it unlawful for persons or corporations to combine or conspire for the purpose of forcing up or down the price of any agricultural product or article of necessity for speculative purposes.\*

**347. Convicts.**—Until the present Constitution was framed, it was customary to lease the convicts of the State penitentiary to private individuals or corporations, who paid the State for their services. So many abuses, however, in Louisiana and other States have arisen from this method of leasing convicted persons that the present Constitution wisely provides that no convict sentenced to the penitentiary shall be leased or hired to any person, corporation, or board. The convicts, however, may be employed under State supervision on public roads and other public works, or on convict farms, or in manufactories owned or controlled by the State. Moreover, judges in any parish may, under certain conditions, sentence persons convicted of any offence to work on the roads or other public works of the parish.

**348. Pensions.**—Pensions, not to exceed in all \$75,000 a year, are granted to indigent veterans of the Confederate army or navy who were originally

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\* On this subject the student would do well to consult some leading merchant of the community in which he lives.



mustered into service from Louisiana, or who have resided in the State for a certain number of years. For each veteran the pension is eight dollars a month; but he must possess the following qualifications: (1) He must have served honorably from his enlistment until the close of the Civil War, or until he was discharged or paroled; and he must have remained true to the Confederate government till the surrender. (2) He must be indigent and unable to earn a livelihood by his own labor. (3) He must not be salaried or otherwise provided for by the State of Louisiana, or by any other State or government. (4) In case he resided in another State, and enlisted in an organization not mustered in from Louisiana, or in the Confederate navy, he must have resided in Louisiana fifteen years before he applies for a pension. Under certain conditions, a like pension is granted to the widows of veterans.\*

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\* Provision is made for disabled veterans in the Soldiers' Home.

## CHAPTER XL

### STATE INSTITUTIONS. BOARDS AND COMMISSIONS

**349. Charitable Institutions.**—We have seen that it is the duty of each parish or municipal corporation to provide for the sick or disabled paupers resident within its limits. Besides the paupers, however, there are a large number of afflicted persons for whom the State makes provision in its charitable or eleemosynary institutions. Thus there is a home for disabled Confederate soldiers, hospitals for the sick, and asylums for the insane, and for the deaf and dumb, and for the blind. The State makes appropriations for the support of these institutions, and the afflicted persons sent to them, if indigent, are cared for without charge.

**350. Charitable Hospitals.**—There are two charitable hospitals in the State—one in New Orleans and one in Shreveport—which receive appropriations from the General Assembly. These appropriations may vary from time to time, but in 1901 they amounted to \$19,000 for the Shreveport hospital, and \$95,000 for the charitable hospital of New Orleans, with additional sums for the improvement of buildings, etc. Both these institutions are under the control of boards appointed by the governor of the State. The sick are treated without charge.

**351. Institute for the Deaf and Dumb.**—This institution is situated in Baton Rouge. It is controlled by a board of trustees, appointed by the

governor, with the consent of the senate. This board consists of seven resident citizens of the State, with the governor as *ex-officio* president. It appoints a general superintendent of the institution. All persons of sound mind and proper health, between the ages of eight and twenty-two years, who are deaf and dumb, or who are of such defective speech or hearing as not to be able to acquire an education in the ordinary schools, are admitted and provided with instruction, board, and medical attendance at the expense of the institution. The institute receives from the State \$21,600 a year.

**352. Institute for the Blind.**—This institution, also, is situated in Baton Rouge. The board of trustees, which consists of seven members, is appointed by the governor, with the consent of the senate. The governor, himself, is *ex-officio* president. The institute receives, instructs, and supports all persons blind, or of such defective vision as not to be able to acquire an education in the ordinary schools, who are between the ages of seven and twenty-two, of sound mind and proper health, and residents of the State. The institute receives from the State \$10,000 a year.

**353. Insane Asylum.**—This institution is located at Jackson, Louisiana. It receives an annual appropriation of \$125,000. The governor, with the consent of the Senate, appoints eight persons, who constitute the board of administrators. These are appointed for four years from the State at large. Insane persons are admitted for life. Those who are indigent pay nothing, those who are able to pay are charged not less than \$10 a month.

**354. Educational Institutions of the State.**—Besides making provision for the support of the public schools, the State gives aid out of its general funds to certain institutions of higher learning. Only a brief mention of these can be made. They are (1) the Louisiana State University and Agricultural and Mechanical College at Baton Rouge, which receives \$15,000; (2) the State Normal School at Natchitoches, which receives \$18,000; (3) the Industrial School at Ruston, which receives \$10,000; (4) the Southwestern Louisiana Industrial Institute, which receives \$10,000; (5) the Southern University (colored), in New Orleans, which receives \$10,000; and (6) the Teachers' Institutes, held throughout the State, which receive \$1,450. In return for this aid from the State all these institutions give free instruction to State students attending them.

**355. Tulane University of Louisiana.**—This institution is supported by private endowment and receives no direct aid from the State. As was stated above, however, it is exempted by a constitutional amendment from all taxation on its property, whether actually used for educational purposes or not. In return for this indirect aid, Tulane University grants in its academic department a number of scholarships, which give free tuition to the students obtaining them. As each member of the General Assembly has the privilege of appointing one student to a free scholarship, the whole number so appointed may be one hundred and fifty-three.

**356. Educational Advantages.**—From the brief account given of the various educational institutions

of the State, it will be seen that great facilities are offered even to the poorest students for obtaining an education in the higher as well as in the lower branches of learning. Every year shows an increase of these facilities.

**357. Board of Charities and Corrections.**—So much progress has been made of late years in the organization of charitable associations, and in the study of the treatment of the insane and the criminal classes, that the Constitutional Convention was urged to appoint a Board of Charities and Corrections for the State. In compliance with this request the present board was established. It consists of six members, of whom the governor is *ex officio* chairman. The other five members, after the first appointment, are appointed by the governor for six years. They elect a salaried secretary, but serve themselves without compensation. The board has no administrative or executive powers. It visits and inspects all public charitable, correctional, or reformatory institutions, and all such private institutions as are aided or used by parochial or municipal authorities, and all private insane asylums, whether so used or aided, or not. It is required to report annually to the governor and to the General Assembly at each session the actual condition of the institutions visited, and to make such suggestions as may be necessary for their improvement. The suggestions, however, must in each case be approved by the majority of the board controlling the institution.

**358. Louisiana State Board of Agriculture and Immigration.**—This board has such important duties to perform, that the Constitution declares it to be an

integral part of the State government. It consists of six members, one from each congressional district, appointed by the governor, with the consent of the Senate, for six years. In addition the governor, the commissioner of agriculture and immigration, the president of the Louisiana State University and Agricultural and Mechanical College, the vice-president of the board of supervisors of the same institution, and the director of the State experimental stations are all *ex officio* members. The members serve without compensation except for actual expenses. The duties of the board are to encourage, advance, and protect the agricultural interests of the State, and to foster immigration.

**359. Boards of Health.**—The General Assembly has created a board of health for the State at large, and a board for each parish and municipality.

(1) The State board consists of seven physicians from various sections of the State, all of whom are appointed by the governor, with the consent of the Senate. One of them is always appointed president of the board by the governor, at a salary of \$5,000 a year. The powers of the board are extensive. It has control and authority over all maritime quarantine in the State, and supervisory authority over land quarantine, and over all infectious and contagious diseases to suppress and prevent the spread of the same. It further prepares and publishes a sanitary code for the regulation of the health of the State, for the keeping of vital statistics, and for the prevention of the adulteration of all articles intended for human food and consumption.

(2) *Parish Boards*.—The police jury of each parish is required to elect or appoint a suitable person from each ward of the parish, not embraced in an incorporated municipality, and at least three of such persons constitute the parish board of health. The parish board passes ordinances of a local character for the sanitation and health of the parish; but these ordinances must not violate any of the regulations of the State board, which has supreme authority.

(3) *Municipal Boards*.—The council or legislative body of every incorporated municipality in the State is required to elect five suitable persons to constitute a board of health. In Shreveport and Baton Rouge the governor appoints three members of such boards. The powers of the municipal boards are the same as those of the parish boards. Whenever a parish or a municipal board fails to take proper measures for the suppression of disease, the State board has authority to interfere for the preservation of the public health.

**360. Railroad Commission in Louisiana.**—The present constitution created a Railroad Commission to be composed of three members elected from certain districts of the State. After the first election they are elected for six years. They have an office and meet in Baton Rouge. Their salary is \$3,000 a year. The Commission has the power to adopt just rates, charges, and regulations to govern all railroads, steamboats, sleeping cars, express companies, telephone, and telegraph companies within the State. It can prevent such companies from charging higher rates for a shorter than for a longer distance over their respective lines, and it can require railway companies to build

suitable depots, and to keep their tracks and bridges in safe condition, etc. Of course, it is only between points within the State that the power of the Commission can affect the transportation of passengers and freight, or the sending of express matter and telegraph and telephone messages. Under the Federal Government there is a Railroad Commission to regulate traffic between the different States.



## CHAPTER XLI

### POLITICAL PARTIES

#### **361.** Origin and Necessity of Political Parties.

—As all persons do not agree as to the best method of managing the government—either Federal, State, or municipal—political parties were formed at a very early period in the history of this country. The object of each party is to get possession of the reins of government and to hold them by the exclusion of its opponents. In order to accomplish this, it is customary for each party, as for instance, the Democratic and the Republican party at the present time, to adopt a platform or statement of principles, which is published to the State or the country, and on which it strives to elect its candidates. While there are many abuses in the organization and management of political parties, such parties, it is admitted by all, are necessary adjuncts to the government of every country. Their opposition to one another brings the principles of government clearly before the people, and the discussions that accompany every campaign serve as an important means of education. Moreover, every party has to be very careful what policy it pursues while in power; for it knows that its mistakes will be sharply criticised by its opponents, and that it may be turned out of office at the next election. The government, therefore, is likely to be more wisely administered if there exist at least two political parties to

serve as a check one upon the other. However this may be, there is no danger of political parties dying out. Their existence is assured for two reasons: (1) differences of opinion will always exist, and (2) the government, both Federal and State, has honorable and lucrative offices within its gift, and it is certain that the desire to obtain these will create factions and keep up party strife. For while "civil service reform" will remove the lower offices from politics, the higher offices will continue to be the reward of successful candidates.

**362. Organization of State Political Parties.**—As is the case in national politics, so in every State each political party nominates its candidates and conducts its campaign to a large extent as it thinks proper. Central and local committees are appointed, which have charge of what is called the party machine. These committees call conventions, engage public speakers to advocate the campaign platform, and also marshal the forces of their political party. Within certain limits, however, the laws of the State interfere and regulate matters. For instance, we have seen that the law of Louisiana permits political parties to nominate candidates by obtaining the signatures of a certain number of voters to a "nominating paper." The General Assembly has also passed a law, which declares that any person offering or giving to a voter a bribe or any voter accepting the same in any primary election, mass meeting, convention, or other political gathering, shall be guilty of bribery, and on conviction shall be imprisoned not less than six months or more than three years, and fined not less than \$25

nor more than \$2,000. These laws are indirectly a recognition of political parties, but beyond this the control of nominations, etc., is exercised largely by the parties themselves. It is not necessary to explain all the steps taken in a political campaign; but it is important to give at least a brief description of the primary.

**363. The Primary.**—The simplest form or unit of political organization is the primary. “To call a primary” is generally the first step taken by one of the regular political parties in order to bring its candidates before the public. A primary then is a caucus or meeting in a ward or precinct of all the voters belonging to some political faction. Its function is either to nominate a candidate to represent the ward in some department of the government, or to choose a delegate or delegates to a parish or a State nominating convention.

**364. Management of Primaries.**—Although the importance of the primaries is very generally appreciated, it is unusual for more than six or seven per cent of the voters in any ward to attend them. This non-attendance is caused by a dislike on the part of the better classes to associate with the politicians that generally frequent the primaries. The result is that the control of these influential bodies is largely left to a few “ward bosses.” These decide among themselves what candidates shall be nominated or delegates chosen, and the obedient primary often ratifies their choice. It may be added that as each primary meeting is governed by its own regulations, the leaders of the ward manage to exclude all the voters who refused

to vote the party ticket at the last election or who in some other way have shown themselves too independent.

**365. Primary Elections.**—Often the nomination of candidates, etc., is settled by a vote in the primary meeting itself. Sometimes, however, an opposition faction is formed, and two sets of candidates are offered. In such a case the issue may be submitted to what is called a primary election. Polls are opened, commissioners are appointed by the primary, and each faction strives to obtain the victory by polling the larger vote. The defeated faction is generally pledged to abide by the result. Since January first, 1900, the manner of holding primary elections in Louisiana has been regulated by law. The general provisions are as follows: Any committee or body, authorized by the rules or customs of a political party in this State (having the right under the election law to make nominations by conventions) to call primary elections of or for such political parties, shall at the time of calling such election, adopt a resolution setting forth (*a*) at what place, time and hours the election will be held; (*b*) the number of officers to preside at each polling booth and the manner of choosing the same; (*c*) the object for which the election is held; (*d*) the special qualifications required for voters, in addition to those prescribed by the election law and the Constitution. The State central committee of the political party interested, and the various district and parish committees, may adopt such rules and regulations as they may deem proper; but the rules of subordinate committees may be revised by a committee of the State central

committee. The election officers must reject any vote offered by a person not a legal voter or not possessing the qualifications required.

**366. Independent Movements.**—Outside of the regular political parties, a body of voters, despairing of carrying the primaries, will frequently start an independent campaign. Under "Election Laws" we have seen that candidates may be nominated by 'nomination papers or by a convention of a political party that cast ten per cent of the votes at the last election. Thus candidates may be brought before the public without a primary. As most voters, however, cast their ballots for the candidates presented by the regular machinery of their political party, it is difficult to make an independent movement successful. Nevertheless in city elections, when public sentiment is aroused, the independent movement has often been found an excellent method of accomplishing a reform. In State politics it seldom succeeds, and in national politics, never. It is particularly useful, however, when it enables a voter to cast his ballot in accordance with his principles. Too frequently a voter is compelled either to abstain from voting or to vote for the nominee of his party when he disapproves of that nominee.

We have now considered the various functions of the government of Louisiana. It will be seen that, taken as a whole, the government of a State is a rather complicated piece of machinery, which requires close attention and study to understand all the parts and their relations to one another. It is to be remembered, however, that the State is yet to be considered

with reference to the great Union of which it forms a part. Many of the functions of its government will be better comprehended when examined from this higher point of view.

## PART III

# The Government of the United States

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## CHAPTER XLII

### THE MAKING OF THE GOVERNMENT

*The American Government. Sections 66-222 inclusive.*

The United States, both as forty-five individual States and as a Nation, are an outgrowth of the Thirteen English Colonies planted on the eastern shore of North America in the years 1607-1732. The process by which this change was effected, will be briefly described in this chapter.

**367. The Colonial Governments.**—The Kings of England gave to the companies, proprietors, and associations that planted the Colonies certain political powers and rights. These powers and rights were formally granted in documents called charters and patents; they were duly protected by regular governments, and so became the possession of the people of the Colonies. While differing in details, these governments were alike in their larger features. There was in every Colony (1) an Assembly or popular house of legislation; (2) a Council, which served as an upper house of legislation in most of the Colonies and as an

advisory body to the governor in all of them; (3) a Governor, and (4) Courts of Law. The members of the assembly were chosen by the qualified voters. The members of the council and the governors were elected by the people in Connecticut and Rhode Island, and were appointed by the proprietors in Maryland and Pennsylvania, and by the King in the other colonies. The judges were generally appointed by the King or his representatives. Powers of local government were distributed to local officers in every Colony.

**368. The Home Government.**—The kings who granted the charters and patents, for themselves and their descendants, guaranteed to their subjects who should settle in the Colonies and their children all liberties, franchises, and immunities of free denizens and native subjects within the realm of England. Previous to the troubles that led to the Revolution, the Home government commonly left the Colonies practically alone as free states to govern themselves in their own way. Still they were colonies. The charters enjoined them not to infringe the laws of England, and Parliament passed an act expressly declaring that all laws, by-laws, usages, and customs which should be enforced in any of them contrary to any law made, or to be made, in England relative to said Colonies should be utterly void and of none effect. Moreover, the power to decide what was so contrary the Home government retained in its own hands.

**369. Dual Government.**—Thus from the very beginning the Colonies were subject to two political authorities; one their own Colonial governments, the other the Crown and Parliament of England. In other words, government was double, partly local and partly general. This fact should be particularly noted, for it is the hinge upon



which our present dual or federal system of government turns. The American, therefore, as has been said, has always had two loyalties and two patriotisms.

**370. Division of Authority.**—In general, the line that separated the two jurisdictions was pretty plainly marked. It had been traced originally in the charters and patents, and afterwards usage, precedent, and legislation served to render it the more distinct. The Colonial governments looked after purely Colonial matters; the Home government looked after those matters that affected the British Empire. The Colonies emphasized one side of the double system, the King and Parliament the other side. There were frequent disagreements and disputes; still the Colonists and the Mother Country managed to get on together with a good degree of harmony until Parliament, by introducing a change of policy, brought on a conflict that ended in separation.

**371. Causes of Separation.**—The right to impose and collect duties on imports passing the American custom houses, the Home government had from the first asserted and the Colonies conceded. But local internal taxation had always been left to the Colonial legislatures. Beginning soon after 1760, or about the close of the war with France, which had left the Mother Country burdened with a great debt, Parliament began to enforce such taxes upon the people directly. These taxes the Colonies resisted on the ground that they were imposed by a body in which they were not represented or their voice heard. Taxation without representation they declared to be tyranny. At the same time, the acts relative to American navigation were made more rigorous, and vigorous measures were taken to enforce them. In the meantime the Colonies had greatly increased in

numbers and in wealth, and the idea began to take root that such a people, inhabiting such a country, could not permanently remain dependent upon England but must become an independent power. The stamp tax was one of the objectionable taxes.

**372. Independence.**—The Home government dropped or changed some of its obnoxious measures, but still adhered to its chosen policy. New and more obnoxious measures were adopted, as the Massachusetts Bay Bill and the Boston Port Bill. The Congresses of 1765 and 1774 protested, but to no real purpose. Some of the Colonies, like Massachusetts, began to take measures looking to their defense against aggression; and the attempt of General Gage, commanding the British army in Boston, to counteract these measures led to the battle of Lexington, April 19, 1775, and immediately brought on the Revolutionary War. All attempts at composing the differences failing, and the theater of war continuing to widen, the American Congress, on July 4, 1776, cut the ties that bound the Thirteen Colonies to England. After eight years of war the British government acknowledged American Independence.

**373. The Political Effects of Independence.**—The Declaration of Independence involved two facts of the greatest importance. One was the declaration that the Colonies were free and independent States, absolved from all allegiance to the British crown. The other was the formation of the American Union. The original members of the Union as States and the Union itself were due to the same causes. The language of the Declaration is, "We, . . . the representatives of the United States of America, in general congress assembled, . . . do, in the name, and by the authority, of the good people of these Colonies, solemnly publish and declare" their independence.

The States took their separate position as a nation among the powers of the earth. Thus, before the Revolution there were Colonies united politically only by their common dependence upon England; since the Revolution there have been States united more or less closely in one federal state or union.

**374. The Continental Congress.**—The body that put forth the Declaration of Independence, known in history as the Continental Congress, had, in 1775, assumed control of the war in defense of American rights. It had adopted as a National army the forces that had gathered at Boston, had made Washington its commander-in-chief, and had done still other things that only governments claiming nationality can do. And so it continued to act. First the American people, and afterwards foreign governments, recognized the Congress as a National government. But it was a revolutionary government, resting upon popular consent or approval, and not upon a written constitution. A government of a more regular and permanent form was called for, and to meet this call Congress, in 1777, framed a written constitution to which was given the name, "Articles of Confederation and Perpetual Union." Still Congress had no authority to give this constitution effect, and could only send it to the States and ask them for their ratifications. Some delay ensued, and it was not until March 1, 1781, that the last ratification was secured and the Articles went into operation.

**375. The Confederation.**—The government that the Articles provided for was very imperfect in form. It consisted of but one branch, a legislature of a single house called Congress. Such executive powers as the Government possessed were vested in this body. The States appointed delegates in such manner as they saw fit, and had an equal voice in deciding all questions. Nine States were

necessary to carry the most important measures, and to amend the Articles required unanimity. In powers the Government was quite as defective as in form. It could not enforce its own will upon the people, but was wholly dependent upon the States. It could not impose taxes or draft men for the army, but only call upon the States for money and men; and if the States refused or neglected to furnish them, which they often did, Congress had no remedy. Much of the disaster and distress attending the war grew out of the weakness of Congress, and when peace came, the States became still more careless, while Congress became weaker than ever. Meantime the state of the country was as unsatisfactory as that of the Government. The State governments were efficient, but they looked almost exclusively to their own interests. Commercial disorder and distress prevailed throughout the country. As early therefore as 1785 the conviction was forcing itself upon many men's minds that something must be done to strengthen the Government or the Union would fall to pieces.

**376. Calling of the Federal Convention.**—In 1785 Commissioners representing Virginia and Maryland met at Alexandria, in the former State, to frame a compact concerning the navigation of the waters that were common to the two States. They reported to their respective Legislatures that the two States alone could do nothing, but that general action was necessary. The next year commissioners representing five States met at Annapolis to consider the trade of the country, and these commissioners concluded that nothing could be done to regulate trade separate and apart from other general interests. So they recommended that a general convention should be held at Philadelphia to consider the situation of the United States, to devise further pro-

visions to render the Articles of Confederation adequate to the needs of the Union, and to recommend action that, when approved by Congress and ratified by the State Legislatures, would effectually provide for the same. This recommendation was directed to the Legislatures of the five States, but copies of it were sent to Congress also and to the Governors of the other eight States. So in February, 1787, Congress adopted a resolution inviting the States to send delegates to such a convention to be held in Philadelphia in May following. And the Legislatures of all the States but Rhode Island did so.

**377. The Constitution Framed.**—On May 25, 1787, the Convention organized, with the election of Washington as President. It continued in session until September 17, when it completed its work and sent our present National Constitution, exclusive of the fifteen Amendments, to Congress. In framing this document great difficulties were encountered. Some delegates favored a government of three branches; others a government of a single branch. Some delegates wanted a legislature of two houses; some of only one house. Some delegates wished the representation in the houses to be according to the population of the States; others were determined that it should be equal, as in the Old Congress. Differences as to the powers to be exercised by Congress were equally serious. There were also controverted questions as to revenue, the control of commerce, the slave trade, and many other matters. Furthermore, the opinions that the delegates held were controlled in great degree by State considerations. The large States wanted representation to be according to population; a majority of the small ones insisted that it should be equal. The commercial States of the North said Congress should control the

subject of commerce, which the agricultural States of the South did not favor. Georgia and the Carolinas favored the continuance of the slave trade, to which most of the other States were opposed. But progressively these differences were overcome by adjustment and compromise, and, at the end, all of the delegates who remained but three signed their names to the Constitution, while all the States that were then represented voted for its adoption. What had been done, however, was to frame a new constitution and not to patch up the old one. The body that framed it is called the Federal Convention and the Convention of 1787.

**378. The Constitution Ratified.**—The Convention had no authority to make a new constitution, but only to recommend changes in the old one. So on the completion of its work, it sent the document that it had framed to Congress with some recommendations. One of these was that Congress should send the Constitution to the States, with a recommendation that the Legislatures should submit it to State conventions to be chosen by the people, for their ratification. Congress took such action, and the States, with the exception of Rhode Island, took the necessary steps to carry out the plan. Ultimately every State in the Union ratified the Constitution; but North Carolina and Rhode Island did not do so until the new Government had been some time in operation. Nor was this end secured in several of the other States, as Massachusetts, New York, and Virginia, without great opposition.

**379. Friends and Enemies of the Constitution.**—Those who favored the ratification of the Constitution have been divided into these classes: (1) Those who saw that it was the admirable system that time has proved it to be; (2) Those who thought it imperfect but still be-

lieved it to be the best attainable government under the circumstances; (3) The mercantile and commercial classes generally, who believed that it would put the industries and trade of the country on a solid basis. Those who opposed it have been thus divided: (1) Those who resisted any enlargement of the National Government, for any reason; (2) Those who feared that their importance as politicians would be diminished; (3) Those who feared that public liberty and the rights of the States would be put in danger; (4) Those who were opposed to vigorous government of any kind, State or National.<sup>1</sup>

**380. The New Government Inaugurated.**—The new Constitution was to take effect as soon as nine States had ratified it, its operation to be limited to the number ratifying. When this condition had been complied with, the Continental Congress enacted the legislation necessary to set the wheels of the new Government in motion. It fixed a day for the appointment of Presidential Electors by the States, a day for the Electors to meet and cast their votes for President and Vice-President, and a day for the meeting of the new Congress. The day fixed upon for Congress to meet was March 4, 1789; but a quorum of the House of Representatives was not secured until April 1, and of the Senate not until April 6, owing to various causes. On the second of these dates the Houses met in joint convention to witness the counting of the Electoral votes. Washington was declared elected President, John Adams Vice-President. Messengers were at once sent to the President- and Vice-President-elect summoning them to New York, which was then the seat of government. Here Washington was inaugurated April 30. The Legislative and Executive branches of the Government were now in motion.

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<sup>1</sup>G. T. Curtis: *History of the Constitution*, Vol. II, pp. 495, 496.

## CHAPTER XLIII

### AMENDMENTS MADE TO THE CONSTITUTION

*The American Government. Sections 457-460; 467-474; 536-537; 604-607; 623-652.*

It was anticipated that amendments to the Constitution would be found necessary, and a method was accordingly provided for making them. This method embraces the two steps that will now be described.

**381. Proposing an Amendment.**—This may be done in either of two ways. First, Congress may propose an amendment by a two-thirds vote of each House; secondly, Congress shall, on the application of the Legislatures of two-thirds of the States, call a convention of the States for that purpose. The first way is evidently the simpler and more direct of the two, and it is the one that has always been followed.

**382. Ratifying an Amendment.**—This also may be done in either one of two ways. One is to submit the amendment to the Legislatures of the States, and it becomes a part of the Constitution when it is ratified by three-fourths of them. The other way is to submit the amendment to conventions of the States, and it becomes binding when three-fourths of such conventions have given it their approval. Congress determines which of the two ways shall be adopted. The first is the simpler and more direct, and it has been followed in every instance.

**383. Amendments I-X.**—One of the principal objections urged against the Constitution when its ratification was pending in 1787-88, was the fact that it lacked a bill of rights. Such a bill, it may be observed, is a



statement of political principles and maxims. The States had fallen into the habit of inserting such bills in their constitutions. At its first session, Congress undertook to remedy this defect. It proposed twelve amendments, ten of which were declared duly ratified, December 15, 1791. These amendments, numbered I to X, are often spoken of as a bill of rights.

**384. Amendment XI.**—Article III of the Constitution made any State of the Union suable by the citizens of the other States and by citizens or subjects of foreign states. (See section 2, clause 1.) This was obnoxious to some of the States, and when such citizens began to exercise their right of suing States a movement was set on foot to change the Constitution in this respect. An amendment having this effect was duly proposed, and was declared ratified January 8, 1798.

**385. Amendment XII.**—According to the original Constitution, the members of the Electoral colleges cast both their ballots for President and neither one for Vice-President. The rule was that the candidate having most votes should be President, and the one having the next larger number Vice-President, provided in both cases it was a majority of all the Electors. In 1800 it happened that Thomas Jefferson and Aaron Burr had each an equal number of votes and a majority of all. The Democratic-Republican party, to which they belonged, had intended Jefferson for the first place and Burr for the second. The election went to the House of Representatives, and was attended by great excitement. Steps were taken to prevent a repetition of such a dead-lock. This was accomplished by an amendment declared ratified September 25, 1804.

**386. Amendment XIII.**—Slavery was the immediate exciting cause of the Civil War, 1861-65. In the course

of the war President Lincoln, acting as commander-in-chief of the army and navy of the United States, declared all the slaves held in States and parts of States that were engaged in the war against the Union free. The other Slave States, Delaware, Maryland, Kentucky, Tennessee, and Missouri, and parts of Louisiana and Virginia, his power did not reach, as they were not in rebellion. The conviction grew strong throughout the country that slavery should not survive the war. This conviction asserted itself in Amendment XIII, which took effect December 18, 1865.

**387. Amendment XIV.**—At the close of the Civil War Congress was called upon to deal with the important question of readjusting the States that had seceded from the Union. It was thought necessary to incorporate certain new provisions into the Constitution. So an elaborate amendment was prepared and duly ratified. It was declared in force July 28, 1868. The most far-reaching of the new provisions were those in relation to citizenship contained in the first section.

**388. Amendment XV.**—Down to 1870 the States had fixed the qualifications of their citizens for voting to suit themselves. At that time most of the States, and all of the Southern States, denied suffrage to the negroes. The emancipation of the slaves, together with Amendment XIV, made the negroes citizens of the United States and of the States where they resided. But the negroes had no political power, and so no direct means of defending their civil rights. To remedy this state of things a new amendment was proposed and ratified, bearing the date of March 30, 1870. It declared that the right of citizens to vote should not be abridged, either by the United States or by any State, on account of race, color, or previous condition of servitude.

## CHAPTER XLIV

### THE SOURCE AND NATURE OF THE GOVERNMENT

*The American Government. Sections 223-262; 610-613; 615-620; 655-658; 763-772.*

The source of the Government of the United States, and some of its leading features, are either stated or suggested in the first paragraph of the Constitution. This paragraph is commonly called the Preamble, but it is really an enacting clause, since it gives the instrument its whole force and validity.

**389.** The Preamble. — “We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

The following propositions are either asserted or implied in this language :—

1. The Government proceeds from the people of the United States. They ordain and establish it. It is therefore a government of the people, by the people, and for the people.

2. The ends for which it is ordained and established are declared. It is to form a more perfect union, establish justice, etc.

3. It is a constitutional government. It rests upon a written fundamental law. On the one part it is opposed

to an absolute government, or one left to determine its own powers, like that of Russia; and on the other, it is opposed to a government having an unwritten constitution, consisting of maxims, precedents, and charters, like that of England.

4. The terms Union and United States suggest that it is a federal government. The peculiarity of a federal state is that local powers are entrusted to local authorities, while general powers are entrusted to general or national authorities. How this division of powers originated, and how it affected the country in 1775–1789, was pointed out in the last chapter. The government of a State has been described in Part II. of this work, while Part III. is devoted to the Government that is over all the States.

5. The same terms suggest that the Government is one of enumerated powers. It must be remembered that when the Constitution was framed thirteen State governments were already in existence, and that no one dreamed of destroying them or of consolidating them into one system. The purpose was rather to delegate to the new Government such powers as were thought necessary to secure the ends named in the Preamble, and to leave to the States the powers that were not delegated, unless the contrary was directly specified.

**390. The Constitution in Outline.**—The Constitution is divided into seven Articles, which are again divided into sections and clauses.

ARTICLE I. relates to the Legislative power.

ARTICLE II. relates to the Executive power.

ARTICLE III. relates to the Judicial power.

ARTICLE IV. relates to several subjects, as the rights and privileges of citizens of a State in other States, the surrender of fugitives from justice, the admission of

new States to the Union, the government of the National territory, and a guarantee of a republican form of government to every State.

ARTICLE V., a single clause, relates to the mode of amending the Constitution.

ARTICLE VI. relates to the National debt and other engagements contracted previous to 1789 and the supremacy of the National Constitution and laws.

ARTICLE VII., consisting of a single sentence, prescribes the manner in which the Constitution should be ratified, and the time when it should take effect.

The fifteen Amendments relate to a variety of subjects, as has been explained in Chapter XXVIII.

**391. The Three Departments.**—It has been seen that the Constitution distributes the powers of government among three departments, which it also ordains and establishes. This was done partly to secure greater ease and efficiency of working, and partly as a safeguard to the public liberties. Absolute governments are simple in construction, concentrating power in the hands of one person, or of a few persons; while free governments tend to division and separation of powers. In the words of Mr. Madison: “The accumulation of all powers, legislative, executive, and judiciary in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”<sup>1</sup>

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<sup>1</sup> *The Federalist*, No. 47.

## CHAPTER XLV

### THE COMPOSITION OF CONGRESS AND THE ELECTION OF ITS MEMBERS

*The American Government. Sections 263-301; 324-330.*

**392. Congress a Dual Body.**—From an early time, the English Parliament has consisted of two chambers, the House of Commons and the House of Lords. Such a legislature is called bicameral, as opposed to one that is unicameral. The words mean consisting of two chambers and of one chamber. The great advantage of a bicameral legislature is that it secures fuller and more deliberate consideration of business. One house acts as a check or balance to the other; or, as Washington once put it, tea cools in being poured from the cup into the saucer. Countries that Englishmen have founded have commonly followed the example of the Mother Country in respect to the duality of their legislatures. Such was the case with the Thirteen Colonies, but such was not the case with the American Confederation from 1775 to 1789. In the Convention that framed the Constitution, the question arose whether the example of England and of the Colonies, or the example of the Confederation, should be followed. It was finally decided that all the legislative powers granted to the new Government should be vested in a Congress

which should consist of a Senate and a House of Representatives.

**393. Composition of the Two Houses.**—The House of Representatives is composed of members who are apportioned to the several States according to their respective numbers of population, and are elected for two years by the people of the States. The Senate is composed of two Senators from each State, who are chosen by the Legislatures thereof, and each Senator has one vote.

The composition of Congress at first sharply divided the Federal Convention. Some members wanted only one house. Others wanted two houses. Some members were determined that the States should be represented in the new Congress equally, as had been the case in the old one. Others were determined that representation should be according to population. These controversies were finally adjusted by making two houses, in one of which representation should be equal and in the other proportional. This arrangement explains why New York and Nevada have each two Senators, while they have respectively thirty-four members and one member in the House of Representatives. This equality of representation in the Senate is the most unchangeable part of the National Government. The Constitution expressly provides that no State shall, without its own consent, ever be deprived of its equal suffrage in the Senate, which is equivalent to saying that it shall never be done at all. No such provision is found in relation to any other subject.

**394. Qualifications of Representatives and Senators.**—A Representative must be twenty-five years old, and must be a citizen of the United States of at least

seven years' standing. A Senator must be thirty years of age and must be nine years a citizen. The Representative and the Senator alike must be an inhabitant of the State in which he is elected or for which he is chosen. Previous absence from the State, even if protracted, as in the case of a public minister or consul to a foreign country, or a traveler, does not unfit a man to sit in either house. Representatives are not required by law to reside in their districts, but such is the custom.

No person can be a Senator or Representative, or an Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who having once taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an Executive or Judicial officer of any State, to support the Constitution of the United States, has afterwards engaged in insurrection or rebellion against the same, or given assistance to their enemies. But Congress may remove this disability by a two-thirds vote of each house.

**395. Regulation of Elections.**—The times, places, and manner of electing Senators and Representatives are left, in the first instance, to the Legislatures of the States, but they are so left subject to the following rule: "Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators." Defending this rule in 1788, Mr. Hamilton said: "Every government ought to contain in itself the means of its own preservation; while it is perfectly plain that the States, or a majority of them, by failing to make the necessary regulations, or by making improper ones, could break up or prevent the first elections of the Houses of Congress." The right to name the places where Senators



shall be chosen is denied to Congress for a very sufficient reason. If Congress possessed that power it could determine, or at least largely influence, the location of the State capitals.

**396. Elections of Senators.**—Previous to 1866, the Legislature of every State conducted these elections as it pleased. Sometimes the two houses met in joint convention, a majority of the whole body determining the choice. Sometimes the two houses voted separately, a majority of each house being required to elect. It is obvious that the two methods might operate very differently. If the same political party had a majority in both houses, the result would probably be the same in either case; but if the two houses were controlled by different parties, then the party having the majority of votes on a joint ballot would probably elect the Senator. If the second plan was followed, and the two houses differed in regard to a choice, there were delays, and elections were sometimes attended by serious scandals. So Congress, in 1866, passed a law providing that the Legislature next preceding the expiration of a Senator's term, in any State, shall, on the second Tuesday after its meeting and organization, proceed to elect a Senator in the following manner:—

1. Each house votes, *viva voce*, for Senator. The next day at twelve o'clock the two houses meet in joint session, and if it appears from the reading of the journals of the previous day's proceedings that the same person has received a majority of all the votes cast in each house, he is declared duly elected.

2. If no election has been made, the joint assembly proceeds to vote, *viva voce*, for Senator, and if any person receive a majority of all the votes of the joint assembly, a majority of all the members elected to both

houses being present and voting, such person is declared duly elected.

3. If a choice is not made on this day, then the two houses must meet in joint assembly each succeeding day at the same hour, and must take at least one vote, as before, until a Senator is elected or the Legislature adjourns.

4. If a vacancy exists on the meeting of the Legislature of any State, said Legislature must proceed, on the second Tuesday after its meeting and organization, to fill such vacancy in the same manner as in the previous case; and if a vacancy occur when the session is in progress, the Legislature must proceed, as before, to elect on the second Tuesday after they have received notice of the vacancy.

**397. Vacancies.**—When a vacancy occurs in the recess of the Legislature of a State, owing to death or other cause, the Governor makes an appointment that continues until the next meeting of the Legislature, when the vacancy is filled in the usual manner. In all cases of vacancies the appointed or newly elected Senator only fills out the term of his predecessor.

**398. Division of Senators.**—The Senators are equally divided, or as nearly so as may be, into three classes with respect to the expiration of their terms, as follows:

Class 1, 1791, 1797.....1893, 1899

Class 2, 1793, 1799.....1895, 1901

Class 3, 1795, 1801..... 1897, 1903

The two Senators from a State are never put in the same class; and as the terms of the first Senators from a State now admitted to the Union expire with the terms of the classes to which they are assigned, one

or both of them must serve, and both may serve, less than the full term of six years.

**399. Electors of Representatives.**—The persons who may vote for the most numerous branch of the State Legislature in any State, or the house of representatives, may also vote for members of the National House of Representatives. Usually, however, a State has only one rule of suffrage; that is, a person who may vote for members of the lower house of the State Legislature may vote also for all State and local officers. Practically, therefore, the rule is that State electors are National electors; or, in other words, the Constitution adopts for its purposes the whole body of the State electors, whoever they may be. In Wyoming, Colorado, and Utah women vote on the same terms and conditions as men. In Massachusetts, Connecticut, Maine, Mississippi, Louisiana, and South Carolina there is an educational qualification for the suffrage. But in most of the States males only twenty-one years of age and upwards, having certain prescribed qualifications, are permitted to vote.

**400. Apportionment of Representatives in the Constitution.**—The Constitution provides that members of the House of Representatives shall be apportioned among the several States according to their respective numbers. The original rule for determining these numbers was that all free persons, including apprentices or persons bound to service for a term of years, but excluding Indians not taxed (or Indians living in tribal relations), and three-fifths of all other persons, should be counted. The “other persons” were the slaves. The abolition of slavery and the practical disappearance of apprenticeship have considerably simplified matters. The Fourteenth Amendment to the Constitution provides that Representatives shall be apportioned according to

population, counting the whole number of persons in a State, excluding Indians who are not taxed. This rule is applied to the people of the States regardless of age, sex, color, or condition. The Constitution further provides that the number of Representatives shall not exceed one for every 30,000 people, but that every State shall have one Representative regardless of population.

**401.** The Census.—The Constitution of 1787 fixed the number of members of the House of Representatives at 65, and apportioned them among the States as best it could, using the information in respect to population that was accessible. It also provided that an actual enumeration of the people should be made within three years of the first meeting of Congress, and that it should be repeated thereafter within every period of ten years. This enumeration was also called the census. In conformity with this provision, eleven decennial censuses of the United States have been taken, 1790, 1800, . . . 1890.

**402.** Method of Apportionments.—The decennial apportionment of members of the House is made by Congress, and that body has performed the duty in different ways. The apportionment of 1893 was made in the following manner: First, the House was conditionally made to consist of 356 members. Next, the population of the country, not counting the Territories, was divided by this number, which gave a ratio of 173,901. The population of every State was then divided by this ratio and the quotients added, giving 339. The numbers of Representatives indicated by these quotients were then assigned to the several States, and one Representative each in addition to the seventeen States having fractions larger than one-half the ratio, thus making the original number, 356. The admission of Utah has added one more.

When a new State comes into the Union, its Representative or Representatives are added to the number previously constituting the House.<sup>1</sup>

**403. Elections of Representatives.**—For fifty years Congress allowed the States to elect their Representatives in their own way. The State Legislatures fixed the times and the places and regulated the manner of holding the elections; the elections were conducted without any regulation or control whatever being exercised by the National Government. Very naturally there were considerable differences of practice. In 1842 Congress first exercised its power of regulation. Three points must be noted:—

1. Since 1842 Congress has provided by law that, in every case where a State was entitled to more than one Representative, the members to which it was entitled should be elected by districts composed of contiguous territory equal in number to the number of Representatives to be chosen, no district electing more than one. It is, however, provided that when the number of Representatives to which a State is entitled has been diminished at any decennial apportionment, and the State Legislature has failed to make the districting conform to the change,

<sup>1</sup> The Numbers of the House and the Ratios of Representation are set down in the following table, with the period:

Period.	Size of House.	Ratio.
1789-1793 .....	65 .....	
1793-1803 .....	105 .....	33,000
1803-1813 .....	141 .....	33,000
1813-1823 .....	181 .....	35,000
1823-1833 .....	212 .....	40,000
1833-1843 .. .	240 .....	47,700
1843-1853 .....	223 .....	70,680
1853-1863 .....	234 .....	93,503
1863-1873 .....	241 .. .	127,941
1873-1883 .....	292 .....	130,533
1883-1893 .....	332 .....	151,911
1893 .....	357 .....	173,901

the whole number shall be chosen by the State as a unit and not by districts. It is also provided that if the number apportioned to any State is increased, and the Legislature fails to district the State, the old districting shall stand, but that the additional member or members shall be elected by the State as a whole. Representatives elected on a general ticket, and not by district tickets, from States having more than one member, are called Representatives-at-large. Since 1872 Congress has prescribed that the districts in a State must, as nearly as practicable, contain an equal number of inhabitants. Congress has never constituted the Congressional districts, as they are called, but has always left that duty to the State Legislatures. As a rule the division of the States into districts, when once made, is allowed to stand for ten years, or until a new apportionment is made; but not unfrequently it is changed, or the State is re-districted, as the saying is, for the sake of obtaining some political advantage. The operation called "gerrymandering"<sup>1</sup> is only too well known in American history.

2. In 1871 Congress enacted that all votes for members of the House of Representatives should be by printed ballots, and that rule has continued until the present day.

3. In 1872 Congress prescribed that the elections should be held on the Tuesday next after the first Monday in November in every even numbered year, 1874, 1876 . . . 1898, 1900, etc. Later legislation exempted from the

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<sup>1</sup>The *Century Dictionary* gives the following history of this word: "*Gerrymander*. In humorous imitation of *Salamander*, from a fancied resemblance of this animal to a map of one of the districts formed in the redistricting of Massachusetts by the Legislature in 1811, when Elbridge Gerry was Governor. The districting was intended (it was believed, at the instigation of Gerry), to secure unfairly the election of a majority of Democratic Senators. It is now known, however, that he was opposed to the measure."

operation of this rule such States as had prescribed a different day in their constitutions. Accordingly Oregon elects her Representatives the first Monday of June, Vermont hers the first Tuesday of September, and Maine hers the second Monday of the same month.

In nearly every case, if not indeed in every one, the State elects State officers at the same time that the elections of the National House of Representatives are held. Moreover, the elections of Representatives are conducted by the same officers that conduct the State elections. These officers count the votes and make the returns required by law. The Representative receives his certificate of election from the Governor of his State. If a vacancy occurs in any State, owing to any cause, the Governor issues a proclamation, called a writ of election, appointing a special election to fill the vacancy.

**404. Compensation of Members of Congress.**—Senators and Representatives receive a compensation from the Treasury of the United States. Congress fixes by law the pay of its own members, subject only to the President's veto.<sup>1</sup>

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<sup>1</sup>The compensation at different times is exhibited in the following table:

1789-1815.....	\$ 6.00 a day.
1815-1817.....	1500.00 a year.
1817-1855.....	8.00 a day.
1855-1865.....	3000.00 a year.
1865-1871.....	5000.00 a year.
1871-1873.....	7500.00 a year.
1873-1896.....	5000.00 a year.

Save for a period of only two years, Senators and Representatives have always received a mileage or traveling allowance. At present this allowance is twenty cents a mile for the necessary distance traveled in going to and returning from the seat of government. The Vice-President, the President *pro tempore* of the Senate, and the Speaker of the House of Representatives now receive each a salary of \$8,000 a year.

**405. Privileges of Members of Congress.**—In all cases but treason, felony, and breach of the peace, Senators and Representatives are exempt from arrest during their attendance at the session of their respective houses and in going to and returning from the same. In other words, unless he is charged with one or more of the grave offenses just named, a member of either house cannot be arrested from the time he leaves his home to attend a session of Congress until he returns to it. Further, a Senator or Representative cannot be held responsible in any other place for any words that he may speak in any speech or debate in the house to which he belongs. This rule protects him against prosecution in the courts, even if his words are slanderous. Still more, speeches or debates, when published in the official report called “The Congressional Record,” are also privileged matter, and the speakers cannot be held accountable for libel. This freedom from arrest and this exemption from responsibility in respect to words spoken in the discharge of public duty, are not privileges accorded to the Senator and Representative in their own interest and for their own sake, but rather in the interest and for the sake of the people whom they represent. If they were liable to arrest for any trivial offense, or if they could be made to answer in a court of law for what they might say on the floor of Congress, the business of the country might be interfered with most seriously. The rights of legislative bodies must be rigidly maintained. The one rule given above is necessary to protect the freedom of representation, the other to protect the freedom of debate.

**406. Prohibitions Placed Upon Members of Congress.**—No Senator or Representative can, during the time for which he was elected, be appointed to any civil



office under the United States that is created, or the pay of which is increased, during such time. Appointments to many offices, and to all of the most important ones, are made by the President with the advice and consent of the Senate. Moreover, the President is always interested in the fate of measures that are pending before Congress, or are likely to be introduced into it. There is accordingly a certain probability that, if he were at liberty to do so, the President would enter into bargains with members of Congress, they giving him their votes and he rewarding them with offices created or rendered more lucrative for that very purpose. This would open up a great source of corruption. A Senator or Representative may, however, be appointed to any office that existed at the time of his election to Congress, provided the compensation has not been since increased. Still he cannot hold such office while a member of Congress. On the other hand, the Constitution expressly declares: "No person holding any office under the United States shall be a member of either house during his continuance in office."

**407. Length of Congress.**—The term Congress is used in two senses. It is the name of the National Legislature as a single body, and it is also the name of so much of the continuous life of that body as falls within the full term of office of the Representative. We speak of Congress, and of a Congress. Thus there are a First, Second, . . . and Fifty-sixth Congress, filling the periods 1789-1791, 1791-1793 . . . 1899-1901. The length of a Congress was fixed when the Convention of 1787 made the Representative's term two years. The time of its beginning and ending was due to an accident. The Old Congress provided in 1788 for setting the new Government in operation; it named

the first Wednesday of March, 1789, as the day when the two Houses of Congress should first assemble, which happened to be the fourth day of that month. Thus a point of beginning was fixed and, as the rule has never been changed, our Congresses continue to come and go on the fourth of March of every other year. The present procedure is as follows: Representatives are chosen in November of every even year, 1896, 1898, 1900, while their terms, and so the successive Congresses, begin on March 4 of every odd numbered year, 1895, 1899, 1901.

While Representatives come and go together at intervals of two years, Senators come and go in thirds at the same intervals. The result is that while a House of Representatives lasts but two years, the Senate is a perpetual body.

**408. Meeting of Congress.**—Congress must assemble at least once every year, and such meeting is on the first Monday of December, unless by law it names another day. Hence every Congress holds two regular sessions. Furthermore, Congress may by law provide for special sessions, or it may hold adjourned sessions, or the President, if he thinks it necessary, may call the Houses together in special session. As a matter of fact, all of these things have been done at different times. As the law now stands the first regular session of Congress begins on the first Monday of December following the beginning of the Representative's term, and it may continue until the beginning of the next regular session, and commonly does continue until midsummer. The second regular session begins the first Monday of December, but can continue only until March 4 of the next year, or until the expiration of the Representative's term. It is the custom to call these the long and the short sessions.

## CHAPTER XLVI

### THE ORGANIZATION OF CONGRESS AND ITS METHOD OF DOING BUSINESS

*The American Government. Sections 275; 293-294; 312-323;  
331-340.*

**409.** Officers of the Senate.—The Vice-President of the United States is President of the Senate, but has no vote unless the Senators are equally divided. The Senate chooses its other officers, the Secretary, Chief Clerk, Executive Clerk, Sergeant-at-Arms, Door Keeper, and Chaplain. The duties of these officers are indicated by their titles. The Senators also choose one of their number President *pro tempore*, who presides in the absence of the Vice-President or when he has succeeded to the office of President. The Senate is a perpetual body and is ordinarily fully organized, although not in actual session, at any given time.

**410.** Officers of the House of Representatives.—The House chooses one of its members Speaker, who presides over its proceedings. It also chooses persons who are not members to fill the other offices, the Clerk, Sergeant-at-Arms, Postmaster, and Chaplain. The Speaker has the right to vote on all questions, and must do so when his vote is needed to decide the question that is pending. He appoints all committees, designating their chairmen, and is himself chairman of the important Committee on Rules. His powers are very great, and he is sometimes said to exercise as much

influence over the course of the Government as the President himself. The Speaker's powers cease with the death of the House that elects him, but the Clerk holds over until the Speaker and Clerk of the next House are elected, on which occasion he presides. It is common to elect an ex-member of the House Clerk.

**411. The Houses Judges of the Election of their Members.**—The Houses are the exclusive judges of the elections, returns, and qualifications of their members; that is, if the question arises whether a member has been duly elected, or whether the returns have been legally made, or whether the member himself is qualified, the house to which he belongs decides it. In the House of Representatives contested elections, as they are called, are frequent. As stated before, the Governor of the State gives the Representative his certificate of election, which is duly forwarded to Washington addressed to the Clerk of the House next preceding the one in which the Representative claims a seat. The Clerk makes a roll of the names of those who hold regular certificates, and all such persons are admitted to take part in the organization of the House when it convenes. Still such certificate and admission settle nothing when a contestant appears to claim the seat. The House may then investigate the whole case from its very beginning, and confirm the right of the sitting member to the seat, or exclude him and admit the contestant, or declare the seat vacant altogether if it is found that there has been no legal election. In the last case, there must be a new election to fill the vacancy. The Governor of the State also certifies the election of the Senator. A Senator-elect appearing with regular credentials is admitted to be sworn and to enter upon his duties, but the Senate is still at liberty to inquire into his election and qualifi-

cations, and to exclude him from his seat if, in its judgment, the facts justify such action. In respect to qualifications, it may be said that persons claiming seats, or occupying them, have been pronounced disqualified because they were too young, or because they had not been naturalized a sufficient time, or because they had been guilty of some misconduct. From the decision of the Houses in such cases there is no appeal.

**412. Quorums.**—The Houses cannot do business without a quorum, which is a majority of all the members; but a smaller number may adjourn from day to day, and may compel the attendance of absent members. Whether a quorum is present in the House of Representatives or not, is determined by the roll-call or by the Speaker's count. If a quorum is not present, the House either adjourns or it proceeds, by the method known as the call of the House, to compel the attendance of absentees. In the latter case officers are sent out armed with writs to arrest members and bring them into the chamber. When a quorum is obtained, the call is dispensed with and business proceeds as before. In several recent Congresses a rule has prevailed allowing the names of members who were present but who refused to vote to be counted, if necessary, for the purpose of making a quorum.

**413. Rules of Proceedings.**—Each house makes its own rules for the transaction of business. The rules of the Senate continue in force until they are changed, but those of the House of Representatives are adopted at each successive Congress. Still there is little change even here from Congress to Congress. Owing to the greater size of the body, the rules of the House are much more complex than the rules of the Senate. The rules of both Houses, like the rules of all legislative

assemblies in English-speaking countries, rest ultimately upon what is known as Parliamentary Law, which is the general code of rules that has been progressively developed by the English Parliament to govern the transaction of its business. Still, many changes and modifications of this law have been found necessary to adapt it to the purposes of Congress, and especially of the House of Representatives.

**414. Power to Punish Members.**—The Houses may punish members for disorderly behavior, and by a vote of two-thirds may expel members. These necessary powers have been exercised not unfrequently. In 1842 the House of Representatives reprimanded J. R. Giddings, of Ohio, for introducing some resolutions in relation to slavery; while the Senate in 1797 expelled William Blount, of Tennessee, for violating the neutrality laws, and in 1863 Mr. Bright, of Indiana, for expressing sympathy with the Southern secessionists. From the decisions of the Houses in such cases there is no appeal.

**415. Journals and Voting.**—The Houses are required to keep a full history of their proceedings in records called journals, and to publish the same except such parts as in their judgment require secrecy. But as the House of Representatives always sits with open doors, the provision in respect to secrecy has no practical effect in that body. It is also null in the Senate except in executive sessions. These are secret sessions held for the transaction of special business sent to the Senate by the President, as the consideration of treaties and nominations. The yeas and nays must be called, and must be entered on the journal, when such demand is made by one-fifth of the members present. The object of these rules is to secure full publicity in regard to what is done in Congress. On the call of the roll, which is the only

form of voting known in the Senate, members are entered as voting yea or nay, as absent or not voting. In the House votes are taken in three other ways: by the *viva voce* method, the members answering aye or no when the two sides of the question are put; by the members standing until the presiding officer counts them; by the members passing between two men called tellers, who count them and report the numbers of those voting on the one side and on the other, to the Chair.

**416. Mode of Legislating.**—A bill is a written or printed paper that its author proposes shall be enacted into a law. Every bill that becomes a law of the United States must first pass both Houses of Congress by majority votes of quorums of their members. Still more, this must be done according to the manner prescribed by the rules, which on this subject are very minute. For example, no bill or joint resolution can pass either house until it has been read three times, and once at least in full in the open house. The presiding officers of the two Houses certify the passage of bills by their signatures. When a bill has thus passed Congress it is sent to the President for his action, who may do any one of three things with it.

**417. Action of the President.**—1. The President may approve the bill, in which case he signs it and it becomes a law.

2. He may disapprove the bill, in which case he sends it back to the house that first passed it, or in which it originated, with his objections stated in a written message. In such case he is said to veto it. This house now enters the message in full on its journal and proceeds to reconsider the bill. If two-thirds of the members, on reconsideration, vote to pass the bill, it is sent to the other house, which also enters the message on

its journal and proceeds to reconsider it. If two-thirds of this house also vote for the bill, it becomes a law notwithstanding the President's objections. The bill is now said to pass over the President's veto. In voting on vetoed bills the Houses must vote by yeas and nays, and the names of those voting be entered on the journal. If the house to which the bill is returned fails to give it a two-thirds vote, the matter goes no farther; if the second one fails to give it such vote, the failure is also fatal. In either case the President's veto is said to be sustained.

3. The President may keep the bill in his possession, refusing either to approve or disapprove it. In this case, it also becomes a law, when ten days, counting from the time that the bill was sent to him, have expired, not including Sundays. However, to this rule there is one important exception. If ten days do not intervene between the time that the President receives the bill and the adjournment of Congress, not counting Sundays, it does not become a law. Accordingly the failure of the President to sign or to return a bill passed within ten days of the adjournment defeats it as effectually as a veto that is sustained by Congress could defeat it. The President sometimes takes this last course, in which case he is said to "pocket" a bill or to give it a "pocket" veto.

**418. Orders, Resolutions, and Votes.** — Every order, resolution, or vote to which the concurrence of both Houses of Congress is necessary, save on questions of adjournment, must be sent to the President for his approval. This rule prevents Congress enacting measures to which the President may be opposed by calling them orders, resolutions, or votes and not bills. Still the resolutions of a single house, or joint resolutions that merely declare opinions and do not enact legislation, are not subject to this rule. Nor is it necessary for the Pres-



ident to approve resolutions proposing amendments to the Constitution of the United States.

**419. The Committee System.**—To a great extent legislation is carried on in both Houses by means of committees. These are of two kinds. Standing committees are appointed on certain subjects, as commerce, the post-office, and foreign affairs, for a Congress. Special committees are appointed for special purposes. The House of Representatives has more than fifty standing committees; the Senate not quite so many. All House committees are appointed by the Speaker. Senate committees are elected by the Senators on caucus nominations. The standing committees of the House consist of from three to seventeen members; of the Senate from two to thirteen. The committees draw up bills, resolutions, and reports, bringing them forward in their respective houses. To them also bills and resolutions introduced by single members are almost always referred for investigation and report before they are acted upon in the house.

**420. Adjournments.**—The common mode of adjournment is for the two Houses to pass a joint resolution to that effect, fixing the time. The President may, in case of a disagreement between the Houses respecting the time of adjournment, adjourn them to such time as he thinks proper; but no President has ever had occasion to do so. Neither House, during the session of Congress, can, without the consent of the other, adjourn for more than three days, or to any other place than the one in which Congress shall be sitting at the time. It is therefore practically impossible for the two Houses to sit in different places, as one in Washington and the other in Baltimore. As is elsewhere explained, the Senate may sit alone to transact executive business, if it has been convened for that purpose.

## CHAPTER XLVII

### THE IMPEACHMENT OF CIVIL OFFICERS

*The American Government. Sections 302-311; 484.*

**421. Impeachment Defined.**—In the legal sense, an impeachment is a solemn declaration by the impeaching body that the person impeached is guilty of some serious misconduct that affects the public weal. In the United States, the President, Vice-President, and all other civil officers are subject to impeachment for treason, bribery, or other high crimes and misdemeanors. In England, military officers and private persons may be impeached as well as civil officers. The “other crimes and misdemeanors” mentioned in the Constitution are not necessarily defined or prohibited by the general laws. In fact, few of them are so treated. Impeachment is rather a mode of punishing offenses that are unusual, and that, by their very nature, cannot be dealt with in the general laws. Thus Judge Pickering was impeached in 1803 for drunkenness and profanity on the bench, and Judge Chase the next year for inserting criticisms upon President Jefferson’s administration in his charge to a grand jury, while President Johnson was impeached in 1867, among other things, for speaking disparagingly of Congress. But none of these acts were prohibited by the laws. Senators and Representatives are exempt from impeachment.

**422. The Power of the House.**—The House of Representatives has the sole power of impeachment, as

the House of Commons has in England. The following are the principal steps to be taken in such case. The House adopts a resolution declaring that Mr. — be impeached. Next it sends a committee to the Senate to inform that body of what it has done, and that it will in due time exhibit articles of impeachment against him and make good the same. The committee also demands that the Senate shall take the necessary steps to bring the accused to trial. Then the House adopts formal articles of impeachment, defining the crimes and misdemeanors charged, and appoints a committee of five managers to prosecute the case in its name, and in the name of the good people of the United States. These articles of impeachment are similar to the counts of an indictment found by a grand jury in a court of law.

**423. The Power of the Senate.**—The action of the House of Representatives settles nothing as to the guilt or innocence of the person accused. The Constitution places the power to try impeachments exclusively in the Senate, as in England it is placed exclusively in the House of Lords. So when the House has taken the first step described in the last paragraph, the Senate takes the action that is demanded. It fixes the time of trial, gives the accused an opportunity to file a formal answer to the charges that have been made against him, and cites him to appear and make final answer at the time that has been fixed upon for the trial. The Senators sit as a court, and when acting in such a capacity they must take a special oath or affirmation. When the President is tried, the Chief Justice presides. No person shall be convicted unless two-thirds of the Senators present vote that he is guilty of one or more of the offenses charged. As the Vice-President would have a personal interest in the issue should the President be put on trial, owing to

the fact that the Vice-President succeeds to the presidency in case of the removal of the President, it would manifestly be a gross impropriety for him to preside in such case. He would be in a position to influence the verdict.

**424. The Trial.**—The Senate sits as a court, as before explained. The ordinary presiding officer occupies the chair on the trial, save in the one excepted case of the President. At first the House of Representatives attends as a body, but afterwards only the five managers are expected to attend. The accused may attend in person and speak for himself; he may attend in person, but entrust the management of his cause to his counsel; he may absent himself altogether, and either leave his cause to his counsel or make no defense whatever. Witnesses may be brought forward to establish facts, and all other kinds of legal evidence may be introduced. The managers and the counsel of the accused carry on the case according to the methods established in legal tribunals. When the case and the defense have been presented, the Senators discuss the subject in its various bearings, and then vote yea or nay upon the various articles that have been preferred. The trial is conducted with open doors, but the special deliberations of the Senate are carried on behind closed doors. A copy of the judgment, duly certified, is deposited in the office of the Secretary of State.

**425. Punishment in Case of Conviction.**—The Constitution declares that judgment in cases of conviction shall not go further than to work the removal of the officer convicted from his office, and to render him disqualified to hold and enjoy any office of honor, trust, or profit under the United States. It declares also that all persons who are impeached shall be removed from office

on conviction by the Senate. Here the subject is left. It is therefore for the Senate to say whether, in a case of conviction, the officer convicted shall be declared disqualified to hold office or not, in the future, and this is as far as the discretion of the Senate extends. Whatever the punishment may be, it is final and perpetual. The President is expressly denied the power to grant reprieves and pardons in impeachment cases. This is because such power, once lodged in his hands, would be peculiarly liable to abuse. But this is not all. If the crimes or misdemeanors of which an officer has been convicted are contrary to the general laws, he is still liable to be indicted, tried, judged, and punished by a court of law just as though he had not been impeached.

**426. Impeachment Cases.**—There have been but seven such cases in the whole history of the country. William Blount, Senator from Tennessee, 1797–98; John Pickering, District Judge for New Hampshire, 1803–1804; Samuel Chase, Justice of the Supreme Court, 1804–1805; James Peck, District Judge for Missouri, 1829–1830; W. W. Humphreys, District Judge for Tennessee, 1862; Andrew Johnson, President of the United States, 1867; W. W. Belknap, Secretary of War, 1876. Only Pickering and Humphreys were found guilty.

## CHAPTER XLVIII

### THE GENERAL POWERS OF CONGRESS

#### *The American Government. Sections 341-418.*

In a free country the legislative branch of the government tends to become the most powerful of all the branches, overtopping both the executive and the judiciary. This is true in the United States. The powers of Congress are divisible into general and special powers, of which the first are by far the more important. The general powers are described in section 8, Article 1, of the Constitution, and occupy eighteen clauses. They will now be described.

**427. Taxation.**—Revenue is the life-blood of government. The first Government of the United States failed miserably, and largely because it could not command money sufficient for its purposes. When the present Government was constituted, good care was taken to guard this point. It was clothed with the most ample revenue powers. Congress may, without limit, lay and collect taxes to pay the debts and provide for the common defense and general welfare of the United States. These taxes are of two kinds, direct and indirect. Direct taxes are taxes on land and incomes and poll or capita-tion taxes. Here the taxes are paid by the person owning the land or enjoying the income. Taxes on imported goods, called customs-duties and sometimes imposts, and taxes on liquors paid at the distillery or brewery, and on cigars and tobacco paid at the factory, are indirect taxes. Here the tax is added to the price of the article

by the person who pays it in the first instance, and it is ultimately paid by the consumer. Taxes of the second class are collectively known as internal revenue to distinguish them from customs or duties, which might be called external revenue. The term excise, used in the Constitution but not in the laws, applies to this great group of taxes. They are collected through the Internal Revenue Office in the Treasury Department. Direct taxes have been levied only five times by the National Government. Customs and internal revenue have always been its great resources.

**428. Special Rules.**—In levying taxes Congress must conform to several rules that the Constitution prescribes. All taxes must be uniform throughout the United States. In legislating on commerce and revenue, Congress must take care not to show a preference for the ports of one State over those of another State. Direct taxes, like Representatives, must be apportioned among the States according to population. And finally, no tax or duty can be laid on any article of commerce exported from any State.

**429. Borrowing Money—Bonds.**—Public expenditures cannot always be met at the time by the public revenues. It becomes necessary in emergencies for governments to borrow money and contract debts. Congress borrows money on the credit of the United States. The principal way in which it exercises this power is to sell bonds. These bonds are the promises or notes of the Government, agreeing to pay specified amounts at specified times at specified rates of interest. During the Civil War more than five billion dollars of such bonds were sold, many of them to replace others that were cancelled. At the present time a large amount of Government bonds is outstanding.

**430. Treasury Notes.**—Congress also authorizes the issue of Treasury notes, called by the Constitution “bills of credit.” They are paid out by the Treasury to meet the expenses of the Government, and while they continue to circulate they constitute a loan that the people who hold them have made to the Government. Such notes were occasionally issued before the Civil War, and since that event they have played a very important part in the history of the National finances. In 1862 Congress authorized the issuance of Treasury notes that should be a legal tender in the payment of all debts, public and private, except duties on imports and interest on the National debt. These notes were not payable on demand, or at any particular time; they did not bear interest, and were not for the time redeemable in gold or silver, which, since 1789, had been the only legal-tender currency of the country. In 1879 the Treasury, in obedience to a law enacted several years before, began to redeem these notes in gold on presentation, and it has continued to do so until the present time. Still they have never been retired from circulation, or been cancelled on redemption, but have been paid out by the Treasury the same as other money belonging to the government. They are popularly called “greenbacks.”

**431. Commerce.**—Congress has power to regulate commerce with foreign nations, among the States, and with the Indian tribes. The exclusive control of commerce by the States, under the Confederation, was a great cause of the hopeless weakness of that government. (See Chap. XXVII.) It may indeed be said that the commercial necessities of the country, more than anything else, compelled the formation of the new Government in 1789. Tariff laws, or laws imposing duties on imported goods, are regulations of commerce, and so are laws



imposing tonnage duties, or duties on the carrying capacity of ships, and laws prescribing the manner in which the foreign trade of the country shall be carried on. The construction or improvement of harbors, the building of lighthouses, surveys of the coasts of the country, and laws in relation to emigration all come under the same head. In order the better to regulate commerce among the States, Congress created the Interstate Commerce Commission, and it has passed a law in relation to the subject of trusts. The Constitution lays down the rule relating to interstate commerce that vessels bound to or from one State to another shall not be required to enter or clear, or to pay duties.

**432. Naturalization.**—All persons born or naturalized in the United States and subject to their jurisdiction are citizens of the United States, and of the State in which they reside. Citizenship, or the state of being a citizen, is membership in the state, or body politic. Congress has provided that a foreigner, unless he belongs to the Mongolian race, may become a citizen, or be naturalized, as the saying is, on his compliance with certain terms and conditions. A residence of five years is necessary. Two years before his admission to citizenship the alien must declare on oath, before a court of record, his intention to become a citizen. On the expiration of the two years, he must prove to this court, or some other one having the same jurisdiction, that he has resided in the United States at least five years, and in the State or Territory at least one year; that he is a man of good moral character; that he is attached to the Constitution, and that he is well disposed to the United States. He must also swear to support the Constitution, must renounce all allegiance to any foreign state or prince,

and lay aside any title of nobility that he has held. He then receives a certificate stating that he is a citizen of the United States, and he becomes entitled to all the rights of a native-born citizen, except that he can never be President or Vice-President. His wife and his children under twenty-one years of age also become citizens. All laws in relation to naturalization must be uniform. The States may confer political rights upon foreigners, as the right to own land and vote within the State, but they cannot confer citizenship.

**433. Bankruptcies.**—A person who is insolvent, or unable to pay his debts, is termed a bankrupt; and a law that divides the property of such person among his creditors and discharges him from legal obligation to make further payment, is termed a bankrupt law. Congress has power to pass uniform laws in relation to this subject. It has passed four such laws, one in 1800, one in 1840, one in 1867, and one in 1898. The States sometimes pass insolvent laws having somewhat the same effect as bankrupt laws, but they are always subject to the National bankrupt law when there is one in force.

**434. Coinage of the United States.**—Congress coins money and regulates its value and the value of foreign coin circulating in the country. This power, taken in connection with other powers, enables Congress, if it chooses, to regulate the whole subject of money. At the present time the National mints are open to all persons for the coinage of gold. Depositors of standard gold are charged merely the value of the copper used in alloying the coin. The gold coins of the Government are the double-eagle, eagle, half-eagle, quarter-eagle, three-dollar piece, and one-dollar piece. These coins are legal tender in payment of all debts, public and

private.<sup>1</sup> Silver coins are now struck at the mints only on account of the Government, and not on account of private persons. These coins are the half-dollar, quarter-dollar, and dime, which are legal tender for debts not exceeding ten dollars. The Government also strikes coins of base metal for small change; the five-cent piece and the one-cent piece, which are legal tender in sums not exceeding twenty-five cents. At different times still other coins have been struck, and some of them are still in circulation. Mention may be made of the dollar, the trade dollar, the two-cent piece, and the half-dime.

**435. The Silver Dollar.**—The silver dollar was the original money-unit of the United States. It was coined, though never in very large quantities, from the founding of the mint in 1792 until 1873, when it was dropped from the list of legal coins. This fact is expressed in the phrase, “silver was demonetized.” The minor silver coins, however, were produced as before. Congress also authorized for several years a new coin, called the trade dollar. In 1878 Congress restored the old silver dollar to the list of authorized coins, and instructed the Secretary of the Treasury to purchase silver bullion for the Government and to coin it into dollars, not less than \$2,000,000, nor more than \$4,000,000, a month. These dollars were also made a legal tender. In 1890 Congress passed a further act instructing the Secretary to purchase 4,500,000 ounces of silver a month on Government account, as before, and to coin it after July, 1891, at his discretion. In 1893 Congress repealed the purchase clause of the previous act, and the further

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<sup>1</sup> Legal-tender money is money with which a debtor can legally pay a debt; that is, if he offers or tenders this money to his creditor, and his creditor refuses to take it, he is not obliged to make other payment.

coinage of silver dollars was discontinued. At no time since 1873 have private persons been permitted to deposit silver at the mints for coinage.

**436. Fineness and Weight of Coins and Ratio of Metals.**—The gold and silver coins of the United States are nine-tenths fine; that is, nine parts of the coins are pure metal and one part is alloy. This is called standard metal. Since 1834, the gold dollar has contained 23.2 grs. of pure metal and 25.8 grs. of standard metal. Since 1792 the silver dollar has contained  $371\frac{1}{4}$  grs. of pure metal, and since 1837,  $412\frac{1}{2}$  grs. of standard metal. It is common to call the last named coin the  $412\frac{1}{2}$  gr. dollar. The amount of pure silver in a dollar's worth of the minor coins is 347.22 grs., and of standard silver 385.8 grs. The ratio of the gold dollar to the silver dollar is popularly said to be 1 to 16. Exactly it is 1 to 15.988. This has been the legal ratio since 1834. When it was established Congress assumed that 16 grs. of silver (nearly so) were equal to one grain of gold in value.

**437. Gold and Silver Certificates.**—To dispense with the necessity of handling so much metallic money, Congress has provided for the issuance of gold and silver certificates. One of these certificates is simply a statement that in consequence of the deposit of — dollars of gold or silver, as the case may be, in the Treasury, the Government will pay the holder of the certificate the corresponding amount. These certificates pass as money, but are not a legal tender.

**438. Counterfeiting.**—Congress provides by law for punishing counterfeiting the coin and securities of the United States, its notes, bonds, etc. The term counterfeiting includes (1) manufacturing or forging coins or paper securities; (2) putting forged coins or securities in circulation; and (3) having them in possession for

that purpose. A person guilty of any one of these three offenses is punishable on conviction by a fine of not more than \$5,000 and by imprisonment at hard labor for not more than ten years. Counterfeiting the notes of the National banks, letters patent, money orders, postal cards, stamped envelopes, etc., is punishable by severe penalties; as is also counterfeiting the coins and securities of foreign governments.

**439. The Independent Treasury.**—Previous to 1846, save for a short period, the Government had no treasury of its own, but kept its money in banks and checked it out as it had occasion. In the year named a treasury was established in the Treasury Building at Washington, provided with rooms, vaults, and safes, and a Treasurer was appointed. Subtreasuries were also established in the principal cities of the country and put in charge of officers known as Subtreasurers. Subtreasuries are now to be found in New York, Boston, Charleston, Philadelphia, Baltimore, Cincinnati, Chicago, St. Louis, and San Francisco.

**440. The National Banks.**—In 1863 and 1864 Congress provided for the creation of the present system of National banks, which have played so important a part in the business of the country. These banks are directly managed by boards of directors chosen by their stockholders, but they are supervised by the Comptroller of the Currency, whose office is established in the Treasury Department. Their notes or bills, which are fully secured by National bonds belonging to the banks that are deposited in the office of the Comptroller at Washington, constitute a National currency.

**441. Weights and Measures.**—Congress has power to fix the standard of weights and measures, but has never fully exercised the power. In general the standards in

use are the same as those in use in England. The English brass Troy pound is the legal Troy pound at the mints, while the Imperial avoirdupois pound and the wine gallon rest upon usage. Congress has authorized the use of the metric system of weights and measures, but has not made it compulsory.

**442. The Postal Service.**—Congress has created the vast postal system of the country, the cost of which is now about \$100,000,000 a year. The mails are carried by contractors. Postmasters paid \$1,000 or more a year are appointed by the President for a term of four years; all others by the Postmaster-General at his pleasure. A great majority of the postmasters do not receive regular salaries, but a percentage on the income of their offices. Towns having gross post-office receipts of \$10,000 or more have free mail delivery by letter-carriers. In towns of 4,000 inhabitants or more letters bearing a special 10-cent stamp are delivered by a special carrier immediately on their receipt. Letters may also be registered, to secure their greater safety in delivery on payment of a 10-cent fee. Money orders are also sold by certain post-offices called money-order offices, which to a limited extent take the place of money in the transaction of business.

**443. Rates of Postage.**—There are four classes of domestic mail matter bearing different rates of postage. All postage must be pre-paid in the form of stamps.

1. Letters, postal cards, and other written matter, and all packages that are closed to inspection. Save on postal cards and drop letters mailed at non-delivery offices, the rate is two cents an ounce or fraction of an ounce.

2. Periodicals, magazines, etc. The rate on matter of this class when sent from a registered publishing

office or a news agency is one cent a pound; when sent otherwise, it is one cent for every four ounces.

3. Books, authors' copy accompanying proof-sheets, etc., are charged one cent for two ounces or fraction of the same.

4. Merchandise limited to 4-pound packages is charged one cent an ounce.

**444. Copyrights and Patent Rights.**—For promoting science and the arts, Congress provides that authors may copyright their works and inventors patent their inventions for limited times. The author of a book, chart, engraving, etc., by means of a copyright, enjoys the sole liberty of printing, publishing, and selling the same for twenty-eight years, and on the expiration of this time he, if living, or his wife or his children if he be dead, may have the right continued fourteen years longer. An inventor also, by means of letters patent, enjoys the exclusive right to manufacture and sell his invention for seventeen years, and on the expiration of that period the Commissioner of Patents may extend the right, if he thinks the invention sufficiently meritorious. Copyrights are obtained at the office of the Library of Congress, patent rights at the Patent Office, both in Washington. The cost of a copyright is one dollar and two copies of the book or other work copyrighted. The cost of a patent right is \$35.00. Every article that is copyrighted or patented must be appropriately marked.

**445. Piracies and Felonies.**—Congress defines the punishment of piracies and felonies on the high seas, and offenses against the Law of Nations. In a general sense piracy is robbery or forcible depredation of property on the seas, but Congress has by law declared some other acts, as engaging in the slave trade, to be piracy.

Felonies, strictly speaking, are crimes punishable by death. The Law of Nations is a body of rules and regulations that civilized nations observe in their intercourse one with another. The high seas are the main sea or ocean, which the law of nations limits by a line drawn arbitrarily at one marine league, or three miles, from the shore.

**446. Powers of Congress in Relation to War.**—Congress has the power to declare war, which in monarchical countries is lodged in the Crown. It raises and supports armies. It provides a navy. It makes rules for the government of the army and navy. It provides for calling out the militia of the States to execute the laws of the Union, to suppress insurrection, and repel invasion. It provides for organizing, arming, and disciplining the militia, and for the government of such of them as may be called into the service of the United States; but the States have authority to appoint the officers and to train the militia according to the discipline that Congress has prescribed. These powers are very far-reaching. Acting under the laws of Congress, President Lincoln, in the course of the Civil War, called into the service of the Union fully 3,000,000 men. A navy counting hundreds of vessels was also built. At present the army consists of 65,000 men. On January 1, 1899, the navy consisted of 229 vessels in service, while 33 more were in course of construction. The highest title in the army is Major-General, the highest in the navy Admiral. The soldiers of the United States are divided into the regular troops and the militia. The former are in constant service; the latter are the citizen soldiery enrolled and organized for discipline and called into service only in emergencies. In the fullest sense of the word, the militia are the able-bodied male citizens of the States



between the ages of eighteen and forty-five. The President cannot call them into active service for a longer period than nine months in any one year. In service, they are paid the same as the regular troops.

**447. The Federal District.**—Previous to 1789 the United States had no fixed seat of government, and Congress sat at several different places. The resulting evils led the Convention of 1787 to authorize Congress to exercise an exclusive legislation over a district, not more than ten miles square, that particular States might cede and Congress might accept for a capital. The cession of Maryland and the acceptance of Congress made the District of Columbia the Federal District, and an act of Congress made Washington the Capital of the Union. The various branches of the Government were established there in 1800. The District is now governed by a board of three commissioners, two appointed by the President and Senate, and one an engineer of the army who is detailed by the President for that purpose. Congress pays one-half the cost of government, the people of the District the other half. Congress also has jurisdiction over places within the States that have been purchased for forts, arsenals, magazines, dock-yards, and other needful public buildings.

**448. Necessary Laws.**—It must be borne in mind that the government of the United States is a government of delegated powers. Still these powers are not all expressly delegated. There are powers delegated by implication, as well as powers delegated in words. Congress is expressly authorized to make all laws that are necessary for carrying into effect the powers that have been described above, and all other powers that the Constitution vests in the Government of the United States, or any department or officer of that Government.

Congress, improves harbors, erects lighthouses, builds post-offices and custom houses, and does a thousand other things that are not particularly named in the Constitution, because in its judgment they are necessary to the execution of powers that are particularly named. The power to establish post-roads and post-offices, for example, or to create courts, involves the power to build buildings suitable for these purposes. This is known as the doctrine of implied powers

Looking over the general powers of legislation that are vested in Congress, described above, we see how necessary they are to a strong and efficient government. They are the master power, the driving force, of our whole National system. If these eighteen clauses were cut out of the Constitution, that system would be like a steamship without an engine.

## CHAPTER XLIX

### ELECTION OF THE PRESIDENT AND THE VICE-PRESIDENT

*The American Government. Sections 446-474.*

It is the business of the Executive Department of the Government to enforce the laws that the Legislative Department makes. Government in a free country begins with law-making, but it ends with law-enforcing. We are now to examine in two or three chapters the National Executive.

**449. The Presidency.**—Congress consists of two Houses, and each house consists of many members, but the Executive office is single, entrusted to one person. The Constitution vests the executive power in the President of the United States. This difference is due to the nature of the things to be done. Legislation demands varied knowledge, comparison of views, and deliberation. Administration calls for vigor, unity of purpose, and singleness of responsibility. The burden of National administration is imposed upon the shoulders of one man.

**450. Presidential Electors.**—The President and the Vice-President are elected by Electors appointed for that purpose. Each State appoints, in such manner as its Legislature may determine, a number of Electors equal to the whole number of its Senators and Representatives in Congress. Early in the history of the Government, different modes of appointing Electors were followed. Since the Civil War, with a single exception, there has been only one mode. All the States now proceed in the same way. This is to submit the question to

the people of the States at a popular election. With this point clearly in mind, we shall go forward to describe the whole series of steps that are taken in electing the President and the Vice-President of the United States.

**451. Presidential Nominations.**—Government in the United States, as in other free countries, is carried on by means of political parties. These party organizations desire to elect the President and control the Government. They hold National conventions, generally in the period June–August of the year before a President is to take his seat, to nominate candidates for President and Vice-President, and to adopt a statement of party doctrines or principles called a platform. These conventions are constituted under fixed rules, and are convoked by National committees. The Republican and Democratic conventions consist each of four delegates-at-large from every State, and twice as many district delegates as the State has members in the House of Representatives. As a rule the delegates-at-large are appointed by State party conventions, and the district delegates by district conventions. In the Republican convention a majority vote suffices to nominate candidates; in the Democratic convention the rule is two-thirds.

**452. Electoral Tickets.**—The next step is to make up the State Electoral tickets. First, State conventions name two Electors for the State called Electors-at-large, or Senatorial Electors. The conventions that name the delegates-at-large to the National conventions may, and often do, name also the candidates for Electors-at-large. Next district Electors are put in nomination, one from a Congressional district, generally by district conventions. The names of the candidates put in nomination by a given party brought together constitute the State

party ticket. No Senator or Representative, or other person holding an office of trust or profit under the United States, can be appointed an Elector.

The two steps that have been described belong wholly to the field of voluntary political action. The Constitution and the laws have nothing whatever to do with them.

**453. Choice of Electors.**—Congress fixes the day upon which the Electors are chosen. It is the same in all States, Tuesday following the first Monday of November, the day on which members of the House of Representatives are elected in most States. Persons who may vote for State officers and for Representatives may also vote for Electors. State officers conduct the election, and the Governor gives the successful candidates their certificates of election. The appointment of the Electors is popularly called the Presidential election. It is so in fact but not in law. In point of law the people do not elect the President and the Vice-President, but only Electors who elect them. In point of fact, as we shall soon see, they do both. All that the National authority has done up to this point is to fix the time of the appointment of Electors. Hereafter that authority directs every step in the process.

**454. Meeting of the Electors.**—On the second Monday of January, following their appointment, the Electors meet at their respective State capitals to vote for President and Vice-President. They name in their ballots the person for whom they vote as President, and in distinct ballots the person for whom they vote as Vice-President. No Elector can vote for persons for both offices from the same State that he himself resides in: one at least of the two candidates must belong to another State. The voting over, the Electors make distinct lists

of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they sign, certify, and seal. Three copies of these lists are made. Two of them they send to Washington addressed to the President of the Senate, one by mail and one by a special messenger. The other copy they deliver to the Judge of the United States District Court for the district in which they meet and vote. Congress by law names the day on which the Electors give their votes, and it must be uniform throughout the Union. The casting of their ballots by the Electors is the formal but not the real Presidential election.

**455. Counting the Electoral Votes.**—On the second Wednesday of February, the day named by Congress, the Senate and the House of Representatives meet in the hall of the House to witness the counting of the Electoral votes. The President of the Senate presides, the Speaker of the House sitting by his side. He opens the certificates of votes and hands them to tellers appointed by the Houses, who read and count the votes. The President of the Senate declares the result. The person having the greatest number of votes cast for President, if a majority of all, is declared President; the person having the greatest number of votes for Vice-President, if a majority of all, is declared Vice-President.

**456. Election of the President by the House.**—If no person has received for President the votes of a majority of all the Electors appointed, the House of Representatives must immediately choose the President from the three candidates who have had the most votes for that office. This election is by ballot. The votes are taken by States, the Representatives from a State having one vote. Nevada balances New York, Delaware Pennsylvania. A quorum to conduct the election consists of a member

or members from two-thirds of the States, and a majority of all the States is necessary to a choice. Twice has the House of Representatives chosen the President, Thomas Jefferson in 1801 and John Quincy Adams in 1825. Both of these elections were attended by great excitement.

If the House fails to choose a President, when the choice devolves upon that body, by March 4 following, then the Vice-President acts, as in the case of the death, removal, or resignation of the President.

**457. Election of the Vice-President by the Senate.**—If no person voted for as Vice-President has a majority of all the Electors appointed, then the Senate shall choose to that office one of the two candidates standing highest on the list of candidates for the Vice-Presidency. A quorum for this purpose consists of two-thirds of the whole number of Senators, and a majority of all the Senators is necessary to a choice.

**458. Miscellaneous Provisions.**—The Electors appointed from a State are often called a college; the Electors from all the States the Electoral colleges. Most of the States have empowered their colleges to fill vacancies that may occur in their number. In 1887 Congress passed an act to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon. This law gives the States jurisdiction over disputed appointments of Electors. It also prescribes the method of proceeding when plural returns are made from any State and in cases where objections are made to a single return.<sup>1</sup>

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<sup>1</sup> The method of electing President and Vice-President outlined above, is that prescribed by the Constitution as originally framed, together with the Twelfth Amendment. For the change introduced by this Amendment, see the Amendment in connection with Article II, section 1, clause 3, of the Constitution as first framed.

**459. The Electoral System.**—When the framers of the Constitution devised the method of election by means of Electoral colleges, they assumed that the Electors would be picked bodies of men, who would vote for the best men for President and Vice-President, regardless of popular feeling and private interest. It may be said that in the case of Washington the plan worked as they expected, but since his second administration it has never done so. No other part of the Constitution has proved so disappointing as the method of electing the President. In 1804 the Constitution was amended to correct evils that had declared themselves in the election of 1800; but the Twelfth Amendment, while accomplishing its immediate purpose, did not prevent the whole plan becoming a miserable failure. The men of 1787 did not foresee the part that politics and political parties would play in American affairs. As we have seen, the President and Vice-President are really named by one of the two great political conventions. The Electors are not chosen to exercise their own best judgment, but to cast their ballots for the party candidates. When once elected, the Electors are not legally bound to vote for these candidates, for the Constitution and laws make no mention of parties and conventions; but they are bound as party men and as men of honor, for they have consented to be elected on this understanding. As the system works, they have no free will whatever, and practically the Electoral colleges are pieces of useless governmental machinery.



## CHAPTER L

### THE PRESIDENT'S QUALIFICATIONS, TERM, AND REMOVAL

*The American Government. Sections 450; 476-482.*

**460. Qualifications.**—The President must be a natural-born citizen of the United States. He must have attained the age of thirty-five years, and have been a resident of the country fourteen years at the time of his election. The Vice-President must have the same qualifications as the President.

**461. Length of Term.**—The term of office of both the President and the Vice-President is four years, and the two officers are eligible to successive re-elections. It has often been contended that it would be better to give the President a term of six or seven years, and then make him ineligible to a second election.

**462. The President's Salary.**—This is fixed by Congress. From 1789 to 1873 it was \$25,000 a year; since 1873 it has been \$50,000. Congress also provides the President the furnished house known as the White House for an official residence. The President's salary can neither be increased nor diminished after he has entered on the duties of his office. The first of these two prohibitions makes it impossible for him to enter into bargains with members of Congress, whereby they shall receive something that they deem desirable, at the same time that his compensation is increased. The second prohibition makes it impossible for Congress to reduce his compensation, and so to make the President its dependent or creature. All changes in the salary must therefore be prospective. Still further, the President cannot, during

his continuance in office, receive any other public emolument than his salary, such as a gift or present from the United States or from any State. The salary of the Vice-President is \$8,000.

**463. The President's Oath.** — Before entering on the duties of his office, the President must take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States." This oath is in general a definition of the President's duties. He is exclusively an executive officer. The occasion on which the President takes this oath is popularly called his inauguration, and is marked by a good deal of parade and ceremony. The custom now is to conduct the inauguration on the East Front of the Capitol at Washington. The Chief Justice administers the oath, and the President delivers an address called his inaugural address. With the exception of the oath, none of these ceremonies are required by the Constitution or the laws, and they might be dispensed with. It is also customary for the Vice-President to take his oath in the Senate Chamber and to deliver a short speech to the Senators.

**464. The Vice-President.** — The only reason for creating the office of Vice-President was to have a proper officer at hand who could succeed to the Presidency in the case of a vacancy. The Vice-President becomes President when the President is removed, dies, resigns, or is unable to discharge the powers and duties of his office. The President can be removed only by conviction on impeachment. If he resigns he must file his resignation in writing in the office of the Secretary of State. Just what inability to discharge the duties of his office is, has never

been settled. President Garfield performed but one executive act from July 2, 1891, to his death, which occurred September 19 following. It was much discussed at the time whether a case of inability had arisen, but with no practical results. Four Vice-Presidents have become Presidents by succeeding to the office. When the Vice-President becomes President, he succeeds to all the powers, dignities, responsibilities, and duties of the office for the unexpired portion of the term and ceases to be Vice-President. The Constitution provides that the Vice-President shall be the President of the Senate, but this is merely for the purpose of giving dignity and consequence to an officer who, for the most part, would otherwise have nothing to do.

**465. The Presidential Succession.** — Who shall succeed to the Chief Executive office in case both the President and Vice-President die, resign, are removed, or are unable to perform the duties of the office? The Constitution says that Congress shall by law provide for such a case, declaring what officer shall act as President until the disability be removed or a President be elected. The present law, which dates from 1886, declares that first the Secretary of State shall succeed, then the Secretary of the Treasury in case of his death, removal, etc.; afterwards the Secretary of War, the Attorney-General, the Postmaster-General, the Secretary of the Navy, and the Secretary of the Interior in this order. No one of these officers, however, can succeed unless he has been confirmed by the Senate and has all the qualifications that are required of the President. If one of them succeeds he fills the unexpired portion of the term the same as the Vice-President. However, a case of the removal, etc., of both the President and the Vice-President has never yet occurred.

## CHAPTER LI

### THE PRESIDENT'S POWERS AND DUTIES

#### *The American Government. Sections 483-511.*

As is remarked in another place, the oath that the President takes on his inauguration is a general definition of his duties. Still the Constitution declares further that he shall take care that the laws be faithfully executed, and shall commission all officers of the United States. More than this, it describes his duties with more or less detail.

**466. Army and Navy.**—The President is commander-in-chief of the army and navy of the United States, and of the Militia of the States also when they are called into the National service. The effective control of the National forces requires unity of judgment, decision, and responsibility. It is obvious that a congress or a cabinet would be a very poor body to place at the head of an army. The power entrusted to the President is a great one, but he cannot well abuse it so long as Congress alone can declare war, raise and support the army, provide the navy, make rules for the government of the military and naval forces, and provide by law under what conditions the President may call out the militia. The President delegates to chosen officers his authority to command the army and the navy in actual service.

**467. The Pardoning Power.**—Power to try, convict, and pass judgment upon persons charged with crimes and offenses under the laws of the United States is lodged in the courts alone. But courts sometimes commit mis-

takes, and sometimes special circumstances arise that make it proper to exercise clemency towards persons who are undergoing punishment for crime. Again, it may be wise to exercise clemency while the offender is on trial, or even before trial begins. So the President is authorized to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. A reprieve is a temporary suspension of punishment that has been decreed; a pardon is a full release from punishment either before or after it has been decreed. Commonly, however, a pardon comes after conviction.

**468. Treaties.**—A treaty is a solemn engagement or contract entered into between two or more sovereign or independent states. They relate to such subjects as commerce and trade, the rights of citizens of one country in the other, etc. Treaties also deal with the graver subjects of peace and war. The power to enter into a treaty properly belongs to the executive branch of government, as dispatch, secrecy, and unity of purpose are called for. As it might be dangerous in a republic to lodge the power exclusively in the Executive's hands, it is provided that the President, by and with the advice and consent of the Senate, shall have power to make treaties with foreign states.

**469. Mode of Making a Treaty.**—Commonly the steps that are taken are the following: First, the treaty is negotiated or agreed upon by the powers. The negotiation is conducted on the part of our Government by the Secretary of State, a minister residing at a foreign capital, or a minister or commissioner appointed for the purpose. The President, acting through the Department of State, directs the general course of the negotiation. Secondly, the treaty, when it has been negotiated, is wholly in the President's hands. If he disapproves

it, he may throw it aside altogether. If he approves it, or is in doubt whether he should approve it or not, he submits it to the Senate for its advice. Thirdly, the treaty is now wholly in the Senate's hands, except that the President may at any time that he chooses withdraw it from the Senate's further consideration. The Senate may approve or disapprove the treaty as a whole, it may propose amendments, or it may refuse to act at all. If the Senate amends the treaty it is practically a new one, and both the President and the foreign power must assent to it in its new form. The fourth step is an exchange of ratifications. This is a formal act by which the powers concerned signify that all the steps required to make the treaty binding have been taken. Finally, the President publishes the treaty and by proclamation declares it to be a part of the law of the land. The Senate considers treaties in executive session, and its advice and consent in most cases is merely approval or disapproval of what the President has done. A two-thirds vote of the Senate is necessary for the ratification of a treaty.

**470. Appointment of Officers.** — The President nominates, and by and with the advice and consent of the Senate, appoints ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States that are provided for by law, unless the Constitution itself provides for them. Congress may, however, place the appointment of such inferior officers as it thinks proper in the President alone, in the heads of Departments, and in the courts. The President appoints his private secretary and clerks. The appointment of a somewhat larger number of officers is placed in the courts, while the appointment of a very great number is vested in the heads of the Executive

Departments. Thus, the appointment of all postmasters whose salary is less than \$1,000 is placed in the hands of the Postmaster-General. When all these exceptions have been made, a large number of appointments still remains to be made by the President and the Senate.

**471. Mode of Appointment.**—The first step to be taken in filling an office is for the President to make a nomination in writing to the Senate, specifying the office and naming the officer. The Senate refers the nomination to its proper committee, as of a judge to the Committee on the Judiciary, or of a foreign minister or consul to the Committee on Foreign Relations. The committee investigates the subject and reports the nomination back to the Senate, either with or without a recommendation that the nomination be confirmed. The Senate then grants or withholds its confirmation, as it is called. The Senate acts in such a case, as in the case of treaties, in executive session. If the Senate refuses to confirm, the President makes a second nomination, and so on until the place is filled. The Senate sometimes refuses to confirm a nomination if the Senators from the State where the office is, or one of them, objects to it. This is especially the case when the Senator or Senators belong to the political party that for the time has a majority of the body. This custom, which is wholly without support of law, is known as the courtesy of the Senate.

**472. Ambassadors and Other Public Ministers.**—Public ministers are representatives that one state or nation sends to another to look after its interests. Ambassadors are the highest rank of ministers. The other grades are envoys extraordinary or ministers plenipotentiary, ministers-resident, commissioners, and *chargés d'affaires*. The United States now have ambassadors at the capitals of England, France, Germany, Russia, Italy, and Mexico,

and representatives of inferior grade at many other capitals. The salaries paid these representatives, who are collectively called the diplomatic service, range from \$5,000 to \$17,500. The duties and rights of ministers are defined by the Law of Nations, called also International Law.

**473. Receiving Ministers.**—It is the duty of the President to receive ambassadors and other public ministers sent by foreign powers to our Government. This ceremony involves the recognition of the power from which the minister comes, and also his own recognition as a man acceptable to the United States. The President can refuse to receive a minister because he is personally objectionable, and can dismiss him for the same reason.

**474. Consuls.**—The duties of consuls are fixed by treaties and by the municipal law of the nation appointing them. In general it may be said that they look after the commercial interests of the country at large, and assist their countrymen in obtaining commercial rights and privileges. They also perform many other duties. They are business agents and do not rank as ministers. Sometimes, however, diplomatic duties are entrusted to them. A consul-general exercises supervision over the consuls of his country within the country to which he is sent, or within some designated portion of it. The President appoints about 30 consuls-general and about 300 consuls. The highest consular salary is \$6,000. Many consuls receive their compensation in the form of fees.

**475. Military and Naval Officers.**—Unless otherwise provided by law, military and naval officers are appointed in the same manner as civil officers. Still the President, as commander-in-chief, has exclusive control of the commands to which they are assigned. He assigns officers to their places of duty, and removes them for what he deems sufficient reasons. Since 1866 the law



has been that no officer in the military or naval service shall, in time of peace, be dismissed from service except upon, and in pursuance of, the sentence of a court-martial, or in commutation thereof.

**476. Removal from Office.**—The President has the power of removal as well as of appointment. When the Senate is in session a removal is made in the following way: The President sends to the Senate a nomination, just as though the office were not already filled. If the Senate confirms this nomination, the President then commissions the officer and he enters upon the duties of his office. The former incumbent holds the office until the last of these steps has been taken. If the Senate refuses to confirm, the President must send in a second nomination or allow the incumbent to remain undisturbed. In a recess of the Senate a removal is made in a somewhat simpler way. The President now appoints directly, and at the same time gives the appointee his commission, who enters upon his office at once. When the Senate meets at its next session, the President must send to that body, for its action, the name of the appointee. If the Senate confirms the nomination, that is the end of the matter. If it refuses to confirm, the President must then make a second nomination. In either case the removal of the former incumbent is final and absolute.

**477. Vacancies.**—When a vacancy in any office occurs while the Senate is in session, the President makes a nomination, and matters proceed just as explained in the last paragraph. When the vacancy occurs in a recess of the Senate, the President appoints and commissions the officer, and the Senate acts on the nomination at its next session just as in the case of a removal made in the recess.

**478. The Civil Service.**—The persons who serve the Government in civil or non-military capacities are collectively called the civil service. They are divided into two classes called officers and employés. The two classes are not separated by any consistent rule or practice. Officers, who are much inferior in numbers to employés, are appointed and removed. Employés are employed and discharged, not appointed and removed. Laborers in the navy yards, arsenals, and the like are employés; so are many persons in continued service at custom houses and in other offices as well as many clerks. In 1896 the civil service consisted of 178,884 persons. Of these 113,276 were in the Post-office Department, 23,553 in the Treasury Department, 14,967 in the War Department, and 13,846 in the Interior Department. The others were distributed among the other Departments of the Government.

**479. Civil Service Reform.**—Until a short time ago it was the custom for the President and others who were clothed with the appointing power to make appointments and removals of officers for political reasons. The same practice prevailed also in respect to employés. On a change of the administration, and especially when it involved a change of party, great numbers of officers and employés would be removed or discharged to make room for others. A Democratic administration was expected to turn out the Republicans, and a Republican administration to turn out the Democrats. This was called the spoils system. Soon after the Civil War the civil service began to attract the attention of the country. Men saw that the spoils system was accompanied by great abuses and corruption. In 1882 an act was passed under which the service has been materially reformed. This act does not apply to any

office where the joint action of the President and Senate is required to make an appointment. It provides that in the Departments at Washington, and in custom-houses and post-offices where as many as fifty clerks are employed, appointments shall be made by reason of merit or fitness. Competitive examinations are held, and when a new appointment is to be made in any Department or office, as to fill a vacancy, it must be filled from the four persons standing highest on the list of those who have passed the examinations. This is called the eligible list. Every State or Territory is entitled to its fair share of the appointments, and no person can be finally appointed until he has served a probation of six months. This is called the merit system. The President, in the exercise of his discretion as the executive head of the Government, has extended this system to many classes of officers and employés that the law does not in terms include. Mention may be made of the Government Printing Office and of the Postal Railway Service.

**480. The President's Message.**—The President is required to give Congress information of the state of the Union from time to time, and to recommend to its consideration such measures as, in his judgment, are necessary and expedient for the good of the country. At the opening of each session of Congress, he sends to the Houses a written communication that is styled a message, conveying such information and making such recommendations. He also sends in from time to time special messages, conveying special information or recommendations as occasion requires. The communications in which the President makes nominations, transmits treaties to the Senate, and assigns his reasons for refusing to sign bills are also known as

messages. The heads of the several Departments make annual reports to the President, and these the President transmits at the same time that he sends in his annual message. Collectively they are called the Executive Documents. The Treasury Department reports to the House of Representatives.

**481.** Special Sessions of Congress.—The President, on extraordinary occasions, may call the Houses of Congress together in special session. In such cases he transmits a message explaining why he does so, and recommending such action as he thinks necessary to be taken. He may also convene either House of Congress alone, and it is the custom for the President, just before retiring from office, to issue a proclamation calling the Senate together immediately following the inauguration of his successor. This gives the new President an opportunity to nominate his Cabinet and such other officers as he thinks important to appoint at that time. No President has ever found it necessary to call the House of Representatives by itself.

## CHAPTER XLII

### THE EXECUTIVE DEPARTMENTS

*The American Government. Sections 511-524.*

The executive business of the Government is transacted through the eight Executive Departments, that Congress has by law created. The President's office in the White House exists only for his personal convenience and is not an office of record. All the public records are kept in the Departments through which the business is transacted. The Departments are established in Government buildings in Washington. The names of the Departments, with the dates of their establishment, are as follows: State, Treasury, War, Justice, formerly called the Office of the Attorney General, and Post-Office, 1789; Navy, 1798; Interior, 1849, and Agriculture, 1889. The heads of these Departments all receive the same salary, \$8,000 a year.

**482.** Department of State.—At the head of this Department stands the Secretary of State, who is considered the head of the Cabinet. There are also three Assistant Secretaries of State. Under the direction of the President, the Secretary conducts the foreign and diplomatic business of the country. The originals of all treaties, laws, and foreign correspondence are in his custody. He also has in his possession the seal of the United States, and affixes it to public documents that require it, and also authenticates the President's proclamations with his signature. The business of the Department is conducted through various bureaus, such as Archives

and Statistics, the Diplomatic, and the Consular Bureaus, etc.

**483.** Department of the Treasury.—The Secretary of the Treasury proposes plans for the public revenues and credit, prescribes the manner of keeping the public accounts, superintends the collection of the revenue, issues warrants for the payment of moneys appropriated by Congress, and makes an annual report of the state of the finances. The several auditors of the Department examine the accounts of the different branches of the public service; the comptrollers certify the results to the Register, who has charge of the accounts and is the National book keeper. The Treasurer has the moneys of the Government in his custody, receiving and disbursing them. The Commissioner of Customs looks after the customs, the Comptroller of the Currency after the National Banks, and the Commissioner of Internal Revenue after that part of the public service. There are also directors of the Mint, of Statistics, and of Printing. The head of the Department is assisted by three Assistant Secretaries.

**484.** Department of War.—The Secretary of War directs the military affairs of the Government. He has charge of the army records, superintends the purchase of military supplies, directs army transportation and the distribution of stores, has the oversight of the signal service and the improvement of rivers and harbors, and looks after the supply of arms and munitions of war. The Department contains ten bureaus: The offices of the Adjutant, Quartermaster, Commissary, Paymaster, and Surgeon Generals, the Chief of Engineers, the Ordnance and Signal Office, the Bureau of Military Justice, and the Military Academy at West Point. There is also an Assistant Secretary of War.

**485. Department of Justice.**—The head of this Department is the Attorney-General, who is the responsible adviser of the President and the heads of the other Executive Departments on matters of law. He and his assistants look after the interests of the Government in the courts, prosecuting or defending law suits to which the United States are a party, and passing upon the titles of all lands purchased by the Government for forts or public buildings. There are in the Department a Solicitor General, four Assistant Attorney-Generals, two Solicitors of the Treasury, a Solicitor of Internal Revenue, a naval Solicitor, and an Examiner of Claims for the Department of State. The District Attorneys in the different judicial districts are also under the direction of the Attorney-General.

**486. Post - Office Department.**—Subject to the President, the Postmaster-General is the head of the vast postal service of the country. He has a larger number of subordinates than all the other heads of Departments together. The First Assistant Postmaster-General has charge of salaries and allowances, free delivery, money-orders, dead letters, and correspondence. The Second Assistant has charge of the transportation of mails, including contracts, inspection, railway adjustments mail equipment, railway mail service, and foreign mails. The Third Assistant has general charge of the finances of the department, including accounts and drafts, postage stamps and stamped envelopes, registered letters and classification of mail matter, special delivery and official files and indexes. The Fourth Assistant has general charge of appointments, including bonds and commissions, appointment of post-office inspectors, depredations on the mails, and violations of the postal laws.

**487. Department of the Navy.**—The Secretary of the Navy stands to this Department in the same relation that the Secretary of War stands to the War Department. There is one Assistant Secretary. The several bureaus of the department are: Yards and Docks, Equipment and Recruiting, Navigation, Ordnance, Medicine and Surgery, Provisions and Clothing, Steam Engineering, Construction and Repairs. The Military Academy at Annapolis is also subject to the Secretary of the Navy.

**488. Department of the Interior.**—The business intrusted to the Department of the Interior is much more miscellaneous and diversified in character than that intrusted to any other Department. The Secretary has general oversight of the Patent Office, Census Office, General Land Office, and Pension Office, Indian affairs, Public Buildings, and the Bureau of Education. The most extensive of these subordinate offices is that of Pensions, which disburses \$140,000,000 annually. The Commissioner of Education collects facts and statistics in regard to education and publishes them in an annual report. There are two Assistant Secretaries of the Interior.

**489. Department of Agriculture.**—It is the duty of the Secretary of Agriculture to diffuse among the people useful information on the subject of agriculture, in the most general and comprehensive sense of that term. He has the supervision of all quarantine regulations for the detention and examination of cattle exported and imported that may be subject to contagious diseases. The Weather Bureau, over which "Old Probabilities" presides, is in this Department. There is one Assistant Secretary.

**490. The Cabinet.**—The heads of the eight Departments constitute what is called the Cabinet. This name, however, is a popular and not a legal one. The



law creates the Departments and defines the duties of their heads. The Constitution empowers the President to call for the opinions in writing of these officers on matters relating to their several duties. The heads of Departments are responsible to the country so far as their duties are defined by law; for the rest they are responsible to the President. They meet frequently with the President to discuss public business. The President defers more or less, as he pleases, to the views that they offer, as he does to the views that they express singly in writing or in conversation, but the Cabinet as such has no legal existence and is not responsible. No official record is made of its meetings. The Constitution makes the President alone accountable for the faithful execution of the laws. Heads of Departments hold their offices subject to the President's will; but he holds, with exceptions given, four years.<sup>1</sup>

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<sup>1</sup> See the Cabinet and the President's responsibility, *The American Government*, paragraphs 522, 523, 524, and *Note*.

## CHAPTER XLIII

### THE JUDICIAL DEPARTMENT

*The American Government. Sections 525-577.*

The third of the independent branches of the Government of the United States created by the Constitution is the Judiciary. Its functions and organization will now be described.

**491. Judicial Power Defined.**—It is the business of the judiciary to interpret the law and apply it to the ordinary affairs of life. The judiciary does not make the law, but it declares what is law and what is not. This it does in the trial of cases, popularly called lawsuits. A case is some subject of controversy on which the judicial power can act when it has been submitted in the manner prescribed by law. It is particularly to be noted that the judicial power is strictly limited to the trial and determination of cases. Some cases involve questions of law, some questions of fact, some questions of both fact and law, and all come within the scope of the judicial power. A court is a particular organization of judicial power for the trial and determination of cases at law.

**492. Vesting the Judicial Power.**—The judicial power of the United States is vested in one Supreme Court and in such inferior courts as Congress sees fit to ordain and establish. The Constitution thus creates the Supreme Court, and it also provides that its head shall be the Chief Justice of the United States. At the present time the inferior courts are the District Court, the Circuit Court, the Circuit Court of Appeals, the

Court of Claims, and the Courts of the District of Columbia and the Territories.

**493. Extent of the Judicial Power.**—The judicial power is co-extensive with the sphere of the National Government. It embraces all cases that may arise under the Constitution and the laws of the United States, and the treaties entered into with foreign nations. It includes all cases affecting ambassadors, other public ministers, and consuls; all cases of admiralty and maritime jurisprudence; cases to which the United States are a party; cases that arise between two or more States, or between a State and foreign states; cases between citizens of different States, and cases between citizens of the same State who claim lands granted by different States, and cases between citizens of a State and foreign states, citizens, or subjects.

**494. Kinds of Jurisdiction.**—A court has jurisdiction of a case or suit at law when it may try it, or take some particular action with regard to it. There are several kinds of jurisdiction. A court has original jurisdiction of a case when the case may be brought or begun in that court. It has appellate jurisdiction when it may re-hear or re-examine a case that has been decided or has been begun in some inferior court. The methods by which this is done are called appeal and writ of error. An appeal brings up the whole question, both law and fact, for re-examination; a writ of error, the law only. A court has exclusive jurisdiction of a case when it is the only court that can try it or can dispose of it in some particular manner. Two or more courts have concurrent jurisdiction of a case when either one may try it, provided the case comes properly before it.

**495. The District Court.**—Congress has created sixty-nine Judicial Districts, in each one of which a Dis-

trict Court is organized. There is at least one district in every State, and in the most populous States there are two or more. There are only sixty-six District judges, as a few of the judges preside over two districts. Each district has its own District Attorney, who is the local law officer of the Government, a Clerk who keeps the records of the court and issues legal papers under its seal, and a Marshal who is the executive officer of the court. A District court must hold at least two terms every year. It has a limited range of jurisdiction in civil cases, and especially in admiralty and maritime jurisprudence; that is, in matters relating to shipping and navigation. It also has jurisdiction of many crimes and offences committed in the district.

**496. The Circuit Court.**—The seventy-two districts are grouped in nine Circuits. The first circuit contains four States and four districts, the second three States and five districts, and so on. One of the justices of the Supreme Court is assigned to each circuit, and is called the Circuit Justice. There are two Circuit judges in every circuit, and three in some circuits. The Circuit court sits from time to time in every district that the circuit contains. It may be held by the Circuit Justice, by one of the Circuit judges, or by the District judge of the district where the court is for the time sitting, or by any two of these sitting together. The district attorneys, clerks, and marshals mentioned before serve these courts also. The Circuit court has original jurisdiction in civil cases where the amount in controversy is \$2,000, not counting costs, in copyright and patent cases, and many others. It has original jurisdiction in criminal cases, and in capital cases an exclusive one. Once it was also a Court of Appeals from the District court, but its appellate jurisdiction has been abolished.

**497. The Circuit Court of Appeals.**—In every circuit there is also a Circuit Court of Appeals. It consists of three or four judges, of whom two constitute a quorum. The Circuit Justice, the Circuit judges, and the District judges of the circuit are competent to sit in this court. The last, however, can sit only for the purpose of making a quorum in the absence of the Circuit Justice or of one or both of the Circuit judges. The law designates the places where these courts shall be held. First circuit, Boston; second, New York; third, Philadelphia; fourth, Richmond, Virginia; fifth, New Orleans; sixth, Cincinnati; seventh, Chicago; eighth, St. Louis, and ninth, San Francisco. The Circuit Court of Appeals can review many decisions made by the Districts and Circuit courts. In patent, revenue, criminal, and admiralty cases its decisions are final. These courts are exclusively courts of appeals, and they were created expressly to relieve the Supreme Court of a part of its business.

**498. The Court of Claims.**—The Government of the United States carries on vast business operations, and, as is natural, points of dispute are constantly arising. Formerly a person having a claim against the Government that the Executive Departments could not or would not pay, had no redress but to go to Congress for relief. This was unsatisfactory both to claimants and to the Government. To meet this difficulty, the Court of Claims was created and was given jurisdiction over certain classes of claims against the Government. The methods of procedure is for the claimant to enter a suit in court, which is regularly tried and determined. If judgment is rendered against the Government, Congress appropriates money to pay it. This court consists of a Chief Justice and four Associate Justices, and sits only in Washington. Congress has also vested a limited

jurisdiction in respect to claims in the District and Circuit courts.

**499. The Federal District and the Territories.**—Congress has established special courts for the District of Columbia and the Territories. The Supreme Court of the District consists of a Chief Justice and five Associate Justices, any one of whom may hold a court with powers similar to those exercised by the District judges in the States. The Territorial judicial system is similar to this, but the judges are fewer in number.

**500. The Supreme Court.**—The Supreme Court consists of the Chief Justice of the United States and eight Associate Justices. It holds one regular term each year at Washington, beginning the second Monday of October. This court has original jurisdiction in all cases relating to ambassadors and other public ministers and consuls, and those to which a State is a party. It has appellate jurisdiction, both as to law and fact, in all cases originating in the inferior courts, save such as Congress by law shall except. Nearly all the cases that the Supreme Court passes upon are appellate cases. Appeals may be made to it, and writs of error lie to it, from the District and Circuit courts, from the Court of Appeals, and from the Supreme Courts of the Federal District and the Territories.

**501. Appointment of Judges.**—The National judges are appointed by the President by and with the advice and consent of the Senate. The appointments are for good behavior, by which expression official behavior is meant. Nothing is more necessary to a judicial system than the independence of the judges. If they were elected by the popular vote, they might court the popular favor to secure an election. If they served for fixed periods, they might court the Senate and President to

secure re-appointment. The courts of the Federal District and of the Territories do not come within the Constitutional provisions. However, Congress has made the tenure of the first good behavior, and of the second a term of four years.

**502. Pay of the Judges.**—The salary of a judge can not be diminished while he continues in office, but it may be increased. If Congress could reduce the judge's salary after he had entered upon his term, it might control his action and make him dependent upon its will. The salary of the Chief Justice is \$10,500; of the Associate Justices, \$10,000; of the Circuit Judges, \$6,000; and of District Judges, \$5,000. Any judge who has held his commission ten years and has attained to the age of seventy, may resign his office and continue to draw his salary during the remainder of his life.

**503. Concurrent Jurisdiction of National and State Courts.**—The Constitution gives the Supreme Court an original jurisdiction in cases affecting public ministers and consuls, and cases to which a State may be a party. Congress has gone further and declared the jurisdiction of the National courts in certain cases to be an exclusive one. Patent and admiralty cases, for example, are of this class. Outside of this exclusive jurisdiction, Congress has given the State courts a civil jurisdiction concurrent with that of the National courts. Still more, some criminal offenses under the National laws may be prosecuted in the State courts, as those arising under the postal laws.

**504. Appeals from State Courts.**—The Constitution, laws, and treaties of the United States are the supreme law of the land. If the constitution or the laws of a State conflict in any way with this supreme law, such constitution or laws, so far as the conflict extends,

are null and void. Moreover, the power to decide what is, and what is not, a confliktion with the National authority rests with the National judiciary. Hence, any case arising in the courts of a State that involves the National authority may be appealed to the National courts. Such cases are said to involve Federal questions. To this extent, therefore, the courts of the United States are the final and authoritative interpreters of the constitutions and laws of the States.

**505. Rules Regulating Trials.**—A jury system like that found in the States is a part of the National judiciary. All crimes, save in cases of impeachment, must be tried by an impartial jury of the State and judicial district where they have been committed. Crimes committed in the Federal District or in a Territory must be tried in the District or Territory. Crimes committed on the sea are tried in the district in which the accused is arrested, or into which he is first brought when the ship returns to the United States. No person can be put on trial for a capital or infamous crime until he has first been indicted by a grand jury; in such case the trial must be a speedy and public one, and the accused must be informed of the accusation made against him. He shall have the benefit of the compulsory power of the court to compel the attendance of witnesses, and shall also have the assistance of a lawyer for his defense. Excessive bail can not be required, or excessive fines be imposed, or cruel or unnatural punishments be inflicted. No person who has once been tried for an offense and found innocent, can be put on trial for that offense the second time. In a criminal case no man can be compelled to testify against himself, nor can any person be deprived of life, liberty, or property until he has been adjudged guilty according to the common course of the



law. In any civil suit at common law where the amount in controversy is more than twenty dollars, the right of trial by jury is also preserved. Rules like these will be found in the jurisprudence of the several States. These rules, however, relate exclusively to the National tribunals. The Fourteenth Amendment declares that no State shall deprive any person of life, liberty, or property without due process of law.

**506. Military Courts.**—Cases arising in the military and naval service are tried in special courts called courts-martial. This is true of the militia also when they are employed in the public service in time of war or public danger. In all such cases as these the rule in regard to an indictment by a grand jury has no application.

**507. Treason.**—Treason against the United States is either making war against them or siding with their enemies, rendering them aid and comfort. No person can be convicted of this crime, which is considered the greatest of all crimes, except on the testimony of two witnesses to the same offense, or on his own confession of guilt in open court. Congress has enacted two modes of punishment for treason at the discretion of the judge trying the case. The traitor shall suffer death; or he shall be imprisoned at hard labor for not less than five years, be fined not less than \$10,000, and be pronounced incapable of holding any office under the United States.

## CHAPTER LIV

### NEW STATES AND THE TERRITORIAL SYSTEM

*The American Government. Sections 584-597.*

The Territorial System of the United States has played a very important part in their history. It is proposed in this chapter to show how it originated, and to describe its principal features.

**508. The Original Public Domain.**—At the time of the Revolution seven of the thirteen States, called the Claimant States, claimed the wild lands lying west of the Allegheny Mountains and extending to the Mississippi River and the Northern Lakes, which were then National boundaries. In time these States yielded their claims. When the Constitution was framed in 1787, the country northwest of the Ohio River had already come into possession of the Old Congress. The Southern cessions were made later. In general, the cessions to the Nation included both soil and jurisdiction—the ownership of the land and the right to govern the territory. The Northwestern cessions constituted the first Public Domain of the United States; that is, a territory belonging to the Nation in common. The Constitution gave Congress the power to dispose of the National territory, and to make all needful rules and regulations for its government. Before this, however, Congress had established a government over the existing domain, which was styled the Northwest Territory.<sup>1</sup>

**509. Annexations.**—Eight annexations of territory have been made to the United States: Louisiana purchase,

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<sup>1</sup> B. A. Hinsdale, "*The Old Northwest*," Chapters V and VI.

1803; Florida, 1819; Texas 1845; Oregon, 1846; the two Mexican annexations, 1848 and 1853, Alaska, 1867, and the Hawaiian Island, 1898. Generally, these annexations were additions to the Public Domain and became at once subject to the control of Congress. Texas had been an independent power and was admitted to the Union as a State at once without passing through the Territorial probation. Subsequently Texas sold that part of her territory which now forms the eastern part of New Mexico to the United States.

**510. Provision for New States.**—The claimant States made their cessions of Western territory on the condition that, as rapidly as it became ready, such territory should be divided into new States to be admitted to the Union on an equality with the old ones. So a provision was inserted in the Constitution that authorized Congress to admit new States to the Union. But this was not all; some controversies had already arisen concerning the formation of new States out of old ones. So it was provided that no new State should be formed within the jurisdiction of any State, nor should any new State be formed by uniting two or more States, without the consent of the Legislatures concerned and of Congress.

**511. Territories of the United States.**—In a broad sense the whole dominion of the United States is their territory, States and Territories alike. But in common usage the term territory is limited to so much of the whole dominion as has not been formed into States. Still further, as thus limited the word is employed in two senses. An organized Territory is a part of the dominion having prescribed boundaries and a fully developed Territorial Government. Arizona, New Mexico, and Oklahoma are the only Territories of this class. An unorganized

Territory either has no government at all, or has a very rudimentary one carried on by officers sent from Washington. Thus civil government is administered in Alaska, which is an unorganized Territory, by a Governor and Commissioners appointed by the President and Senate.

**512. Government of an Organized Territory.**—Such a government is set up by Congress. The Governor, Secretary, and Territorial Judges are appointed by the President for four years, and are paid from the National Treasury. The Legislature consists of a house of representatives and a council, the members of which are elected by the qualified voters of the Territory. The Legislature legislates on subjects of local concern, subject to the Constitution and laws of the United States. For example, it may establish counties and townships and local self-government for the people. It may also establish a Territorial system of schools. The Governor exercises powers similar to those exercised by the Governor of a State, while the Secretary performs duties similar to those performed by a State Secretary of State. There are also a District Attorney and a Marshal appointed by the President. A Territory can not be represented in Congress or participate in the election of the President and Vice-President. Still an organized Territory is permitted to send a delegate elected by the people to the House of Representatives, who may speak but not vote. It will be seen that the status of a Territory is in all respects inferior to that of a State. A Territory is an inchoate State.

**513. Admission of New States.**—This subject has been committed wholly to the discretion of Congress. Congress makes the boundaries of the State, fixes the conditions of admission, gives the State its name, and

determines the time of admission. Congress settles some of the details in the act creating the Territory, and still others in a law providing for its admission called an Enabling Act. The principal steps to be taken are the following: First, the people of the Territory elect the members of a convention to frame a State constitution. Secondly, the convention thus elected performs the duty duly committed to it. Thirdly, the constitution is submitted to the people for their approval. Fourthly, Representatives and Senators are elected to represent the new State in Congress. Fifthly, comes the formal act of admission, which is sometimes performed by the President, who issues a proclamation to that effect in compliance with a law previously passed, and sometimes is performed by Congress passing an act called an act of admission.

**514. States Admitted.**—Thirty-two new States have been admitted to the Union. Vermont, Maine, West Virginia, Kentucky, and Tennessee were formed from old States and were never Territories. The facts in regard to Texas have been stated already. The other States, twenty-six in number, have been formed from the Public Domain; and, save California alone, have passed through the Territorial probation.

**515. Indian Territory.**—In the year of 1834 this Territory was set apart and dedicated by Congress as a home for so-called civilized tribes of Indians. Many tribes and portions of tribes removed there from east of the Mississippi River. The Indians keep up their tribal organizations of government, but they are subject to the general oversight of Congress. There is a United States Court in the Territory, which exercises jurisdiction over offenses committed against the laws of Congress so far as they are applicable.

**516. The Public Lands.**—Beginning in Southeastern Ohio, in 1786, the Government has caused the public lands to be surveyed according to a practically uniform system. They are first cut up into townships six miles square, and then these are subdivided into sections of 640 acres, which again are divided into lots of 160, 80, and 40 acres. The sections are now numbered, back and forth, in the following manner:

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Such a township as this is called a Congressional township. As a rule, the States have based their divisions of counties and townships on the Government surveys, and it is this fact that gives the maps of the Western States such a checker-board appearance. In general Congress has followed a very liberal policy in respect to the public lands, selling them at low prices, giving them away as bounties to soldiers and to settlers under the homestead law, and granting them to States and railroads and other corporations to stimulate education and public improvements.

**517. School Lands.**—Beginning with Ohio, admitted to the Union in 1803, and continuing to Wisconsin, ad-

mitted in 1848, Congress gave section No. 16 in every Congressional township of the public-land States for the use of common schools. Beginning with California, in 1850, and continuing to the present, it has given sections 16 and 36 in every township for that purpose. Congress has also given every public-land State, or State formed out of the Domain, two townships of land for the support of a State university, and some of them more than two. It has also given lands for agricultural colleges and normal schools, and for other educational purposes.

**518. New States.**—The following table contains the names of the new States, and the dates of their admission to the Union:

Vermont, March 4, 1791.	Wisconsin, May 29, 1848.
Kentucky, June 1, 1792.	California, September 9, 1850.
Tennessee, June 1, 1796.	Minnesota, May 11, 1858.
Ohio, February 19, 1803.	Oregon, February 14, 1859.
Louisiana, April 8, 1812.	Kansas, January 29, 1861.
Indiana, December 11, 1816.	West Virginia, June 19, 1863.
Mississippi, December 10, 1817.	Nevada, October 31, 1864.
Illinois, December 3, 1818.	Nebraska, March 1, 1867.
Alabama, December 14, 1819.	Colorado, August 1, 1876.
Maine, March 15, 1820.	North Dakota, Nov. 2, 1889.
Missouri, August 10, 1821.	South Dakota, Nov. 2, 1889.
Arkansas, June 15, 1836.	Montana, November 8, 1889.
Michigan, January 26, 1837.	Washington, Nov. 11, 1889.
Florida, March 3, 1845.	Idaho, July 3, 1890.
Texas, December 29, 1845.	Wyoming, July 10, 1891.
Iowa, December 28, 1846.	Utah, January 4, 1896.

## CHAPTER LV

### RELATIONS OF THE STATES AND THE UNION

*The American Government. Sections 419-445; 578-583; 598-603; 608-620; 623-631; 644-654; 763-772.*

Part II of this work describes the government of a single State. The preceding chapters of this Third Part describe the Government of the Union in its general features. It is very obvious that either one of these governments, by itself, would be very imperfect. It is equally obvious that they supplement each other. Each one is essential to the other and to society, and neither one is more essential than the other. The two together make up one system of government. The governments of the States are part of the Government of the Union, and the Government of the Union is a part of the governments of the States. The citizen is subject to two jurisdictions, one State and one National. Both of these jurisdictions have been created by the American people, and each one is exclusive and independent within its sphere. In other words, the United States are a federal state, and their Government is a federal government. Moreover, experience shows that such governments are complicated and delicate, and that they will not work well unless the two parts, local and general, are well adapted each to each like the parts of a machine.

**519. The State Sphere.**—The sphere of the State is well marked off. Matters of local and State concern are committed to its exclusive authority. Within its sphere,



the State is perfectly free to do what it pleases, taking good care not to infringe upon the sphere of the Union. It is the great business of the State government to preserve the peace and good order of society within its borders. It defines civil and political rights; defines and punishes crime; protects the rights of property, of person, and of life; regulates marriage and divorce; provides schools and education for the people, and does a hundred other things that it deems necessary to promote the physical, intellectual, and moral well-being of the people.

**520. The National Sphere.**—This is equally well defined. Matters of general, common, or National interest are committed to the Union. Here are the powers to levy taxes and borrow money for National purposes; to regulate foreign commerce; to conduct war; to carry on the post-office; to manage foreign relations, and to exercise the many other powers that are delegated by the National Constitution. It will be seen that these are matters in which the whole American people are interested. Within its sphere, the Nation is just as free and unlimited as the State is within the State's sphere.

**521. The State and the Union.**—Neither one of these jurisdictions is, strictly speaking, limited to matters purely local or purely national. The State does more than merely to look after local interests. The Union does more than merely to see to National affairs. Either authority does some things that, at first thought, might seem to belong exclusively to the other. In this way, great strength is imparted to the whole system, and it is made to do its work more thoroughly. This a series of paragraphs will show.

**522. National Functions of the States.**—The State participates directly in carrying on the Government of

the Union. It defines the qualifications of electors, establishes Congressional districts, conducts the elections of Representatives, elects members of the United States Senate, and appoints Presidential Electors. All these things are purely voluntary. The States cannot be compelled to do them, but if they should refuse or neglect to do them the whole National system would fall into ruins. But, more than this, the Union employs the State militia, and imposes duties upon the governors and judges of the States.

**523. Prohibitions Laid on States.**—The successful working of the National system makes it necessary that certain prohibitions shall be laid on the States. No State can enter into any treaty, alliance, or federation; coin money, issue paper money, make anything but gold and silver a tender in payment of debts, pass any law interfering with contracts, or grant any title of nobility. No State, without the consent of Congress, can levy duties or imposts on imports and exports, beyond what is necessary to pay the cost of its inspection service. No State can, without the consent of Congress, lay any tonnage tax on ships, keep troops or ships of war in time of peace, or enter into any compact or agreement with another State or a foreign power. No State can engage in war, unless it is actually invaded or in immediate danger of invasion.

**524. Duties of State to State.**—If the National System is to work smoothly, it is obvious that a good understanding among the States is necessary. The Constitution accordingly lays various commands upon the States in respect to their relations one to another. The acts, records, and judicial processes of any State are respected by every other State, so far as they can have any application. For example, a marriage contracted or a

divorce granted in one State is a marriage or a divorce in every other State. Citizens of one State passing into another State are entitled to all the rights and privileges that the citizens of the State into which they enter enjoy. If a person who is charged with any crime in one State flees from justice and is found in another State, it is the duty of the Governor of the State to which he has fled to surrender him on the demand of the Governor of the State from which he has fled, that he may be brought to trial and, if guilty, to punishment.

**525. Privileges and Immunities of Citizens.**—Section one of Amendment XIV. declares all persons born and naturalized in the United States and subject to their jurisdiction, to be citizens of the United States and of the State wherein they reside. It contains also the following declarations: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Union owes several important duties to the State.

**526. Republican Form of Government.**—The Union guarantees to every State a republican form of government. If a non-republican government should be established in any State by revolution or otherwise, it would be the duty of the Union to interfere and see that republican government be re-established. Power to decide in such cases what a republican form of government is, belongs to Congress.

**527. Invasion and Domestic Violence.**—The Union must also protect the States against invasion, and in emergencies against domestic violence. These duties are

the more necessary because the Constitution denies to the States the right to keep troops and ships of war in time of peace. If any State is invaded it is the duty of the President to call out the National forces to repel the invasion. In the first instance it is the duty of the State authority to suppress domestic violence within its borders, but if such authority in any case thinks the assistance of the United States to be necessary or advisable, it has the right to call for such assistance. The Legislature, if it be in session, and otherwise the Governor, makes the call. This call is addressed to the President, who takes such steps as he thinks necessary to accomplish the object.

**528. The National Authority and the Public Peace.**—There are, however, certain emergencies in which the President can act directly to suppress domestic violence. When such violence interferes with the operations of the National Government, he need not wait for the State Legislature or Governor to call for assistance, but is in duty bound to act at once to protect the operations of the Government and so to restore the public peace. Thus, when the United States mails and inter-State commerce were interrupted in Chicago in 1894, President Cleveland ordered the National forces to protect the mails and the railroads.

**529. Supremacy of the Union.**—The Constitution, laws, and treaties of the United States are the supreme law of the land. They supersede State constitutions and laws whenever these constitutions and laws encroach upon the supreme law. To secure this end, the judges of the State courts, in interpreting and declaring the law must decide with the United States rather than with the State, in all cases of conflict. To secure this supremacy the more completely, Senators and Representatives

of the United States, members of the State Legislatures, and all executive and judicial officers, both of the United States and of the States, must take an oath or affirmation to support the Constitution of the United States. But no religious faith, opinion, or rite can be made a qualification for holding any office of public trust under the United States.

There are also many prohibitions laid upon the National authority. Several of these have been dealt with already in other places; others will be mentioned in this place.

**530. Writ of Habeas Corpus.**—In countries where this writ is recognized, a sheriff or other officer, or even a private individual, who has a person in his custody whom he is depriving of his liberty, can be made to show cause why he holds him. The person who is held as a prisoner, or other person in his interest, appeals to a court of competent jurisdiction for a writ of *habeas corpus*, which commands the officer or other person to bring his prisoner into court. If he can show no sufficient cause for holding him, the prisoner is set at liberty. This writ is one of the great bulwarks of personal liberty, and the Constitution provides that the privilege of the writ shall not be suspended unless in time of rebellion or invasion when the public safety requires it.

**531. Bills of Attainder and Ex Post Facto Laws.**—A bill of attainder is a legislative act that inflicts punishment of some kind upon a person without a judicial trial. An *ex post facto* law is a law that places some punishment upon an act that was not placed upon it when the act was done. Both the State Legislatures and Congress are forbidden to pass any bill of attainder or *ex post facto* law.

A statement of several restrictions that are imposed upon the States or the Union, or both States and Union, may fitly close this work.

**532. Titles of Nobility.**—These would plainly be out of character and be corrupting in tendency in a republican country. Republicanism assumes the equality of citizens. So it is provided that neither the United States nor any State shall grant any title of nobility. Furthermore, no officer of the United States can, without the consent of Congress, accept any present, office, or title from any king, prince, or foreign state.

**533. No National Church.**—Congress can pass no law in relation to a state church or establishment of religion, or prohibit the free exercise of religion. All churches and religions are, so far as the National authority is concerned, put on the same level. The separation of Church and State is a fundamental principle of American polity.

**534. Freedom of Speech and the Right of Petition.**—Congress can pass no law abridging the freedom of speech or of the press, or denying or limiting the right of citizens peaceably to assemble and to petition the Government for a redress of grievances. This provision, however, is no defense of license of speech or printing, such as slander or libel, or of public tumult and disorder.

**535. Soldiers in Private Houses.**—Tyrannical rulers have often accomplished their purpose of oppression by quartering soldiers in the houses of citizens, to overawe and intimidate them. In the United States soldiers can not be quartered in private houses without the consent of the occupants in time of peace, and not in time of war save in a manner that is prescribed by law.

**536. The Militia.**—Tyrannical governments have often found it necessary, in order to accomplish their purpose, to suppress the citizen soldiery, or to deny the people the right to keep and to bear arms. Our Constitution provides that, since a well regulated militia is necessary to the security of every state, the right of the people to keep and bear arms shall not be infringed.

**537. Searches and Seizures.**—Oppressive rulers have often, or generally, held themselves at perfect liberty to search the papers and persons of citizens or subjects, in order to find evidence for criminating them or for establishing their own tyranny the more thoroughly. Our Constitution provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated. Warrants for the purpose of making such seizures shall not be issued by magistrates unless there is probable cause for issuing them, which must be sworn to by the complainant; and even then they must particularly describe the place to be searched and the persons and things to be seized.

## THE NATIONAL GOVERNMENT.

**I. Colonial Governments consisted of**

- (1) An Assembly,
- (2) A Council,
- (3) A Governor, and
- (4) Courts of Law.
2. The Assembly was chosen by the people.
3. The Council, Governor, and Judges were appointed in various ways.
4. The Colonists possessed the rights of English subjects.
5. Parliament had power to nullify any law passed by the Colonies.
6. The Colonies owed a double allegiance: they were subject—
  - (1) To their own laws, and
  - (2) To those of Great Britain.
7. The Crown and Parliament had supremacy in national affairs.
8. The Colonial Governments were supreme in local affairs.
9. The attempt of Parliament to tax the Colonies precipitated the conflict which ended in independence.

**II. Political Effects of Independence.**

1. The Colonies became free and independent States.
2. The Union that had existed through Great Britain

now existed through Congress.

3. The powers of Congress were defined by the Articles of Confederation.
4. Their inadequacies were supplied by the Constitution.
5. How the Constitution was framed.
6. How it was ratified.
7. The views of its friends and its enemies.
8. How the Government was inaugurated.
9. How amendments may be proposed and ratified.
10. The amendments enumerated and characterized.
11. The preamble an enacting clause.
12. The preamble involves five things: *a.* The people enact it. *b.* It establishes a more perfect union. *c.* It establishes a constitutional government. *d.* It creates a federal state. *e.* The people delegate some powers and reserve others.
13. The provisions of the Constitution are embodied in VII. articles.

**III. How Powers are Distributed.**

1. A Legislative Department makes the laws. The President may veto and the Supreme Court annul them.



2. An Executive Department enforces and administers the laws. Congress may impeach.
3. A Judicial Department interprets and applies. The Legislative Department may impeach and the President and the Senate appoint or remove.

#### **IV. The Legislative Department.**

1. It is bicameral—two-chambered.
2. How the House is elected.
3. Qualifications of Representatives and Senators.
4. The qualifications of electors.
5. How Senators are elected: the four steps.
6. How vacancies are filled.
7. Classes of Senators.
8. Who may vote for Representatives.
9. How Representatives are apportioned.
10. The decennial census.
11. Method of apportionment.
12. Changes in the law: 1842, 1872, 1873.
13. Compensation of national legislators.
14. Privileges of members of Congress.
15. Prohibition affecting members of Congress.
16. Length of each Congress.
17. Times of meeting.
18. Officers of the Senate.

19. Officers of the House of Representatives.
20. Each House the judge of the rights, qualifications, etc., of its members.
21. Quorums to transact business.
22. Rules governing proceedings.
23. Power to punish its own members.
24. Journals and voting.
25. Mode of Legislating.
26. Action of the President.
27. Orders, resolutions.
28. The Committee system.
29. Adjournments.

#### **V. Impeachments.**

1. Any Civil Officer may be impeached.
2. The House impeaches.
3. The Senate tries impeachments.
4. How the trial is conducted.
5. The limit of punishment on conviction.
6. Summary of impeachments.

#### **VI. Powers of Congress.**

1. Taxation.
2. Special Rules.
3. Taxes: direct and indirect.
4. Borrowing money—Bonds and Treasury Notes.
5. Commerce.
6. Naturalization.
7. Bankruptcies.
8. Coinage.
9. History of the silver dollar.

10. Fineness, weight, and ratio of value of gold and silver.
11. Gold and silver certificates.
12. Counterfeiting.
13. The Independent Treasury.
14. National Banks.
15. Weights and Measures.
16. The postal service.
17. Rates of postage.
18. Copyrights and patent rights.
19. Piracies and felonies.
20. Power to declare war.
21. Federal district.
22. Power to make necessary laws.

## VII. Powers of the Executive.

1. The executive power efficient.
2. How the President and the V.-President are elected.
3. How nominated.
4. Electoral ticket.
5. How electors are chosen.
6. How electors vote.
7. How their votes are counted.
8. When electors fail to elect, the House elects President and Senate the V.-President.
9. History of the electoral law.
10. Remarks on the System.
11. Qualifications, term and salary.
12. Oath of office.
13. Duties of the Vice-President.

14. The Presidential succession.
15. Commander-in-chief.
16. Power to pardon, except in impeachment cases.
17. Makes treaties by aid of the Senate.
18. How treaties are made.
19. Appointive power.
20. The President nominates: the Senate confirms.
21. Public ministers.
22. Recognition of countries by receiving ministers.
23. The duties of consuls.
24. Military and naval officers appointed and removed.
25. The President's power of removal.
26. How vacancies are filled.
27. The civil service.
28. Civil service reform.
29. The President's message.
30. Power to call special sessions of each or both Houses.

## VII. Executive Department.

1. Department of State.
2. Department of the Treasury.
3. Department of War.
4. Department of Justice.
5. Post-office Department.
6. Department of the Navy.
7. Department of the Interior.
8. Department of Agriculture.
9. The Constitution and functions of the Cabinet.

**IX. The Judicial Department.**

1. Its functions and powers defined.
2. Where the power is vested.
3. The different kinds of courts.
4. The extent of the judicial power.
5. Original, concurrent and appellate jurisdiction.
6. The number of District Courts.
7. The Circuit Courts.
8. The Circuit Courts of Appeals.
9. The Court of claims.
10. Courts of the Federal District and Territories.
11. The Supreme Court.
12. How the judges are appointed.
13. The compensation of judges.
14. The concurrent jurisdiction of National and State courts.
15. Appeals from State courts.
16. Rules regulating trials.
17. Military courts.
18. Treason and its punishment.

**X. New States and the Public Domain.**

1. The origin of the public domain.
2. Annexation of territory.
3. Provisions for new States.
4. Territories of the United States.
5. The government of an organized Territory.

6. How new States are admitted.
7. Indian Territory.
8. How the public lands are surveyed.
9. School lands.
10. The new States admitted.

**XI. Relation of the States to the Union.**

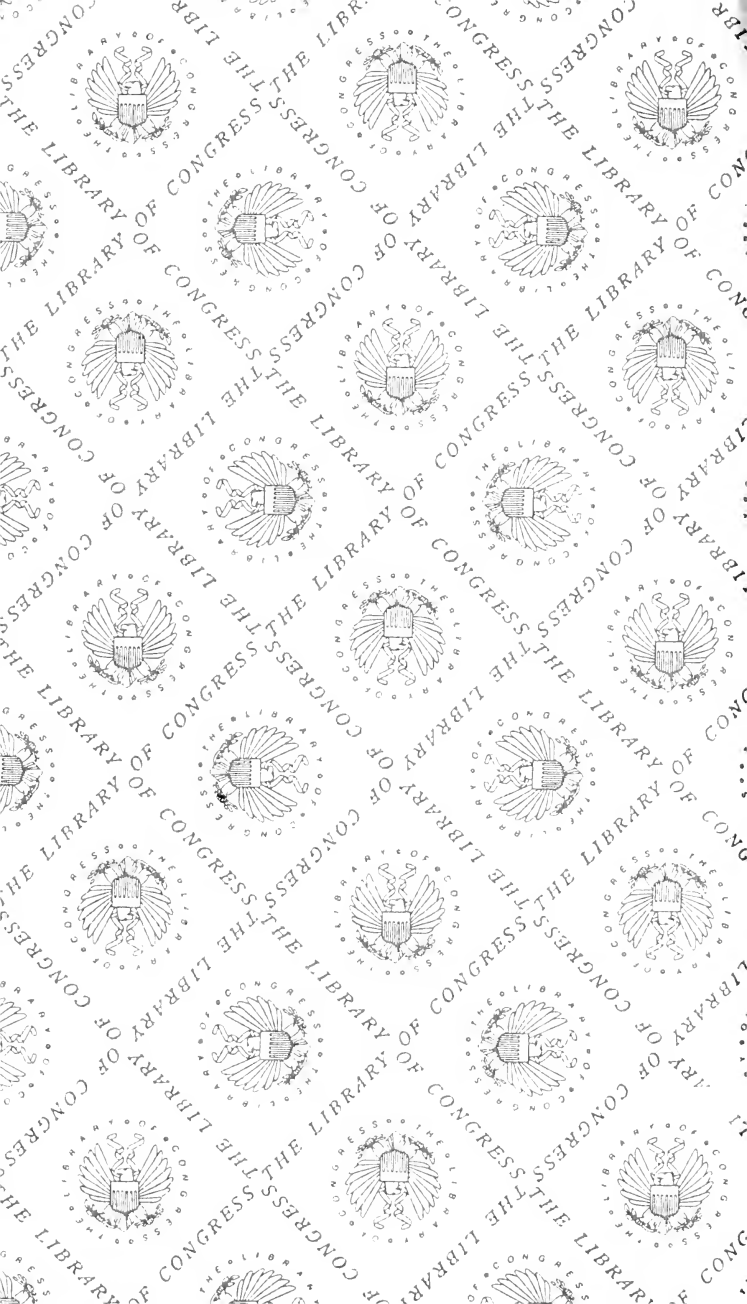
1. The sphere of a State.
2. The sphere of the Nation.
3. The State and the Union.
4. National functions of the States.
5. Prohibitions laid on the States.
6. Mutual duties of States.
7. Privileges and immunities of citizens.
8. A Republican form of government guaranteed.
9. Invasion and domestic violence.
10. National authority and public peace.
11. The supremacy of the Union.
12. The writ of habeas corpus.
13. Bills of attainder and ex post facto laws.
14. No titles of nobility conferred—none to be accepted by public officers.
15. No national church.
16. Soldiers not to be quartered on citizens.
17. The militia.
18. Searchers and seizures.

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